

# **Social Security Matters to Seafarers**

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# Access to social security

- Basic principles
- Access to social security by seafarers
- Regulation 4.5 and Standard A4.5 of MLC, 2006
- EU rules on coordination of social security systems
- Final remarks

# Basic principles

- Coverage provided by countries depending on their socio-economic circumstances
  - ILO C102: at least 3 branches out of 9
- **One stop shop principle**: contributions paid to only one country in case of cross-border workers
- **Country coordination principle** to ensure that cross-border workers benefit from a comprehensive coverage



Case-by-case approach

# Access to social security by seafarers

## Flag State jurisdiction principle

- However
  - Some flag States specifically **exclude** foreign seafarers from their social security system
  - Other flag States include them, but **only** provide them with **some** branches
    - C-465/14, *Raad van bestuur van der Sociale verzekeringsbank v f. Wieland & H. Rothwangl*
  - **Lack of effective country coordination** against a backdrop of **short-term contracts/ change of flag**
  - Outcome: **only private insurance** for a significant no.

# Reg. 4.5 and St. A4.5 MLC, 2006

- Reg. 4.5:
  - *Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection*
  - 2. **Each Member** undertakes to take steps, according to its national circumstances, individually and through international cooperation, **to achieve progressively comprehensive social security protection for seafarers.**

# Reg. 4.5 and St. A4.5 MLC, 2006

- St. A4.5, para. 3:
  - Each Member shall take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to **all seafarers ordinarily resident in its territory**. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. **The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.** In line with Reg. 4.5.

Shift towards country of seafarer's  
residence

# Reg. 5.3 MLC, 2006

- *Purpose: To ensure that each Member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers*
- 1. Without prejudice to the principle of each Member's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding ... **the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention.**

# Reg. 4.5 and St. A4.5 MLC, 2006

- St. A4.5, para. 5:
  - Each Member's responsibilities **with respect to seafarers on ships that fly its flag** shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code, as well as those that are inherent in its general obligations under international law.

## Subsidiary responsibility of the flag State

- CEACR has already reminded a number of flag States of this obligation, including Greece, Lithuania, Malta and Sweden



# Reg. 4.5 and St. A4.5 MLC, 2006

- St. A4.5, para 4:
  - Notwithstanding the attribution of responsibilities in paragraph 3 of this Standard, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which seafarers are subject.

States (and the EU) can coordinate and designate the flag State as the responsible for social security matters

# EU Reg. Social Sec. Coordination

- Flag State principle
- However, the country of residence if
  - Shipowner and seafarer residing in the same EU country
  - Shipowner and seafarer working on board non-EU flagged ship are residing in different EU countries
  - Seafarer residing in an EU country and working for different shipowner or on board different foreign-flagged flag vessels, the country of habitual residence is again preferred provided that a substantial part of their activity is undertaken in that country

# EU Reg. Limitations

- EU Regulations provide very partial prot.:
  - (i) **only apply** to social security schemes set up by national legislation of countries within the EU and EEA plus Switzerland;
  - (ii) **do not apply** to non-statutory complementary insurance schemes or special schemes for self-employed persons and collective agreements unless such agreements are rendered compulsory by national legislation **the case of seafarers and fishers**
  - (ii) **do not apply to third-country nationals** who are working on a vessel flying the flag of a Member State, but who are **not legally resident** in the EU.

Ack. Commission Com. [COM/2007/0591 final]

# Up to national legislation

- Application of equal treatment pr. Between seafarers and shore workers:
  - Belgium, Bulgaria, Cyprus, Germany, Greece, Lithuania, Gibraltar and the Isle of Man (CEACR)
- Seafarers residing in their territory:
  - Bulgaria, Cyprus, Denmark (including the Faroe Islands), France (including New Caledonia), Greece, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Poland, Spain, Sweden and the UK, have not updated their legislation to include seafarers residing in the country, but working on board foreign-flagged ships (CEACR)

# Up to national legislation

- Comprehensive social sec. coverage:
  - **Only 3 branches:** Finland, Hungary, Ireland, Malta, Portugal (including its registry in Madeira), Romania, Slovenia, and UK-Gibraltar
  - **Only 4 branches:** Cyprus, Denmark (including its registry in the Faroe Islands), Germany, Spain and UK-Cayman Islands
  - (CEACR)

# Final remarks

- Access to social security is very challenging for seafarers because of variety of legs. not coordinated
- Although not a panacea, placing the responsibility on these matters upon country of seafarer's residence might ease access
- Provides labour supplying countries a mechanism to enhance recruitment and retention rates
- That can be linked to State aids in mar. transport

# The end...

- Thank you for your attention. Any questions?

