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Social security rights of the European resident seafarers

a joint report of the European Transport
Workers' Federation
and World Maritime University

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ABBREVIATIONS AND ACRONYMS



AF	Affiliate Representative
AO	Administration Officer
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CLEISS	Centre of European and international Liaisons for Social Security
C102	Social Security (Minimum Standards) Convention, 1952 (No. 102)
EEA	European Economic Area
EESSI	European Exchange of Social Security Information
ELA	European Labour Authority
ENIM	<i>Etablissement National des Invalides de la Marine</i>
EFTA	European Free Trade Association
EU	European Union
ILO	International Labour Organization
IMO	International Maritime Organization
INAIL	<i>Istituto Nazionale per l'Assicurazione contro gli Sfortunati sul Lavoro</i>
INPS	<i>Istituto Nazionale de Previdenza Sociale</i>
IPSEMA	<i>Istituto di Previdenza Sociale per il Settore Marittimo</i>
ISM	<i>Institutio Social de la Marina</i>
ETF	European Transport Workers' Federation
ITF	International Transport Workers' Federation
MISSOC	Mutual Information System on Social Protection
MLC, 2006	Maritime Labour Convention, 2006
NHZ	National Health Fund
NIS	National Insurance Scheme
NSSO	National Social Security Office
RIF	<i>Registre International Français RPS Recruitment and Placement Service</i>
SEA	Seafarer's Employment Agreement
SOLAS	International Convention for the Safety of Life at Sea, 1974
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
TFUE	Treaty on the Functioning of the European Union
UNCLOS	United Nations Convention on the Law of the Sea
UWV	<i>Uitvoering Werknemersverzekeringen ZUS Zakład Ubezpieczeń Społecznych</i>
ZUS	<i>Zakład Ubezpieczeń Społecznych</i>
WMU	World Maritime University



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EXECUTIVE SUMMARY



This report presents a mapping exercise undertaken to assess whether national laws and regulations in 10 European Union (EU) countries (Belgium, Croatia, Cyprus, Denmark, France, Italy, Malta, the Netherlands, Poland, and Romania), one European Economic Area (EEA) country (Norway), and the United Kingdom (UK), provide for coverage to seafarers residing in EU/EEA member States, Switzerland (CH) or the UK. A qualitative methodology combining desktop research and empirical legal analysis was used to gather data as to the particularities of their legal framework and how it works in practice. The focus is on the cross-border nature of the profession and whether the regulatory framework provides for effective communication, cooperation and coordination among the relevant countries for the employment relationship and its social security aspects as well as its operation in practice.

Although substantially diverging at national level, the social security systems of the examined countries are coordinated via Regulation (EC) No. 883/2004 of the European Parliament and the Council of 29 April 2004 and a Protocol to the EU/UK Trade and Cooperation Agreement, on Social Security Coordination. These instruments cover seafarers and basically rely on the flag State principle, but only if the vessel is flagged in an EU/EEA/CH/UK country. Otherwise, seafarers' social security regime is determined in accordance with the residence principle as follows:

- both seafarer and shipowner reside in the same EU/EEA/CH/UK country even if the vessel is flagged in another country;
- the seafarer's residence in an EU/EEA/CH/UK country takes precedent over the shipowner's residence in another EU/EEA/CH/UK country provided that a substantial part of the work is performed on the seafarer's country of residence and the vessel is flagged beyond the coordinated area, i.e. a third country;
- if no substantial work is provided in the seafarer's country of residence, the shipowner's residence in an EU/EEA/CH/UK country takes precedent in situation (ii);
- upon the seafarer's request, an agreement can be concluded between the seafarer's country of residence and the flag State to this end provided that both countries are covered by the abovementioned coordination provisions.

The case law of the Court of Justice has played a key role in establishing these situations that exclude just one case: a seafarer that resides in an EU/EEA/CH/UK country, the vessel is flagged in a third country and the shipowner is seated on a third country as well. In this situation in which the free movement of workers in the region is not at stake, the Maritime Labour Convention (MLC), 2006, becomes applicable and establishes the responsibility of the seafarer's country of residence in the first place, only resorting to the flag State principle on a subsidiary basis. Accordingly,

- a seafarer residing in an EU/EEA/CH/UK country but working for a shipowner seated in a third country and on board a ship flying the flag of a third country as well, should be covered by the social security system of his or her residence.

As said, this particular situation is not covered by Regulation 883/2004 and the relevant national legislations have a divergent approach although all of them are a party to the MLC, 2006. Some countries do not contemplate the case for which reason these type of seafarers do not get access to their social security system while others do contemplate it and make seafarers pay contributions to their system either on a mandatory or on a voluntary basis. Some jurisdictions single out the case of these seafarers being recruited by recruitment and placement services (RPSs) seated in their territory to request the latter to pay social security contributions on behalf/instead of the shipowner. Be that as it may, these different approaches point out to a loophole in the social security coordination system to which EU/EEA and national legislations should pay close attention to it as it falls squarely within their competence.

The complexities of the regulatory framework have an impact on its enforcement, impaired to a certain extent by the cross-border nature of the work that makes it difficult to ensure the payment of social security contributions either by the shipowner or the seafarer. Lack of information and education in these matters seems to be a critical contributing factor to such problems that might be addressed by:

- providing compulsory education to seafarers and shipowners;
- and requesting the inclusion of national social security benefits/contributions in the seafarer's employment agreement (SEA), including information on the responsible country for social security matters (the country of residence or the flag State).

The abovementioned social security coordination mechanisms among EU/EEA/CH/UK work smoothly and are further supported by the European Exchange of Social Security Information (EESSI) mechanism from an administrative perspective and the Administrative Commission from a consultative and conciliatory basis. To them, the European Labour Authority (ELA) has been recently added, with the authority to organize joint labour inspections. In this vein, cases of fraud or mistake have been detected mainly after a seafarer's complaint which points out to a situation in which countries lack resources to closely monitor the payment of contributions. Internally, the problem might be aggravated because of the involvement of different bodies: the social security administration as the provider of benefits, the tax agency as the collector of contributions, and the maritime administration. The risk of fraud or mistake increases in the situation not covered by the coordinated area, i.e. that of seafarers residing in the EU/EEA/CH/UK who work on board third-country flagged ships and for shipowners seated also in third countries provided that they are admitted to the national social security scheme either on a mandatory or on a voluntary basis; if not, they are only covered by private insurance in breach of the obligations set up by the MLC, 2006.

The difficulties in enforcing the regulatory framework highlight the significance of communication, cooperation and coordination mechanisms among countries. The latter are particularly effective and efficient among EU/EEA/CH/UK and nevertheless face challenges that are further exacerbated as regards to third countries. To address them, bilateral treaties are essential, but again the extreme internationalization of the seafaring profession curtail their value, in particular because the EU/EEA does not provide for a multilateral framework as regards to third countries. Although most of these treaties are still based on the flag State principle, the latest ones are moving away from this principle and resorting to the seafarer's residence in line with the MLC, 2006. A case in point are the agreements concluded between Norway, Latvia, Poland and Romania on the basis of the flexibility granted by Article 16 of Regulation 883/2004 whereby countries can deviate from the flag State principle. The same provision is regularly invoked by Croatian authorities with their counterparts upon the request of resident seafarers to be covered by the Croatian social security administration instead of that of the flag State.



Nevertheless, and as these examples show, communication, cooperation and coordination among countries remain a priority in social security matters. Having this been achieved to a great extent by the EU/EEA/CH/UK, no recommendation is made as to amendments to the current version of Regulation 883/2004 and the priority granted to the flag State principle. More specifically, and in view of the above, the following recommendations are made:

At EU/EEA/CH institutional level:

APPROACH THE EUROPEAN BASED SEAFARERS' SOCIAL SECURITY AS AN EU MATTER.

The limitations of this study account for not proposing a particular reform in Regulation 883/2004, however attention should be paid to, first, the impact of the short-term employment pattern on getting access to social security benefits and whether it should advise a change in the prevailing principle in the said Regulation; and second, whether it would be advisable to work with the existing State aid systems to enhance recruitment and retention of European based seafarers. Further research on the impact of the Court of Justice's case law applying the residence principle on re-flagging outside the EU/EEA and business relocation should be conducted.

FURTHER ENHANCE ADMINISTRATIVE COOPERATION AMONG EU/EEA/CH/UK COUNTRIES.

The study reveals that the level of cooperation among countries covered by Regulation 883/2004 is satisfactory. However, some grey areas surface either because of gaps in the regulation such as the case of seafarers employed by foreign-seated shipowners on board third country flagged countries; or mistake or fraud that goes undetected. To this end, ELA should be given a clear mandate of raising countries' attention to these grey areas and run joint labour inspection campaigns to map the situation in the sector.

At a national level:

ENHANCE EDUCATION AND INFORMATION AVAILABLE ON SOCIAL SECURITY SYSTEMS.

In addition to lack of knowledge in view of these matters' complexity, they tend to be disregarded at a young age and gain significance later in life. Accordingly, seafarers' training should include education in these matters. The systems are complex and information on them, in particular on requirements to get benefits, should be made available on a more transparent manner and in English in addition to national languages, taking into account the global character of the profession.

ADDRESS THE CASES OF SEAFARERS RESIDING IN THEIR TERRITORY NOT COVERED BY REGULATION 883/2004.

The mandate derives from the MLC, 2006, and requests for addressing the situation of European based seafarers but working for shipowners seated in third countries and on board ships also registered in third countries. Some countries do have rules in this respect that include the obligation of RPSs based in their territory to pay social security contributions that should have been normally paid by those shipowners. Should the seafarer not have been recruited via a RPS based in their territory, the obligation lies in the seafarer him/herself, either on a mandatory or on a voluntary basis.

INCLUDE, AND PROMOTE THE INCLUSION OF, SOCIAL SECURITY PROTECTION WITHIN THE PARTICULARS OF SEA.

As a way to navigate the complex coordination of social security matters, specific reference should be made in the employment contract or the collective bargaining agreement, as to which are the particular social security arrangements in the individual case. This provision should go beyond the social protection to be provided by the shipowner. The onus on clarifying this point is on flag States which should establish clear obligations upon shipowners to always address these matters in SEAs.

ENHANCE COMPLIANCE AND ENFORCEMENT OF NATIONAL SOCIAL SECURITY PROVISIONS.

Although this research is restricted to the functioning of social security coordination provisions and mechanisms in the EU/EEA/CH, some instances were detected in which administrations could improve their performance. In this vein, attention should be paid to the coordination between maritime and social security administrations at a national level in order to identify who is employed on board ships registered in the country. Likewise, flag States should cooperate with the seafarer's country of residence in identifying the relevant social security system.



INTRODUCTION



The purpose of this study which was commissioned by the European Transport Workers' Federation (ETF) to the World Maritime University (WMU), is to assess whether national laws and regulations actually provide for coverage to seafarers residing in at least one EU/EEA/CH member State or the United Kingdom (UK). To this end, a mapping exercise of the national legislation related to social security in Belgium, Croatia, Cyprus, Denmark, France, Italy, Malta, the Netherlands, Norway, Poland, Romania, and the UK, has been carried out.

Desktop research was used to find answers to the following questions:

- To what extent and how are European domiciled seafarers covered by a social security system of an EU Member State (based on a selection of countries)?
- Do the EU national systems ensure the minimum coverage as established on the international level or do they go beyond?
- Are European domiciled seafarers being treated differently than EU shore-based workers when it comes to social security? If yes, positively or negatively?
- Are there loopholes in the existing regulations (international, European, national) that permit a lack of coverage or make it difficult for European-domiciled seafarers to have their rights applied?

ETF affiliates/ITF inspectors and national social security institutions from the above-mentioned countries were contacted to obtain (to the extent possible):

- data related to the actual enjoyment of social security by seafarers (beyond what the legislation says);
- information as to whether EU member States are actually coordinating to provide social security to seafarers.

To this end, a semi-structured interview was designed addressing the abovementioned questions¹. 17 ETF affiliate representatives (AR) from the abovementioned 12 countries were interviewed while 20 officers (AO) from nine out of the 12 member States (Belgium, Croatia, Denmark, France, Malta, the Netherlands, Norway, Poland and Romania) accepted to be interviewed, either online, by phone or via a written questionnaire. One representative from a major shipping company as well as one from a recruitment and placement service were also interviewed. The draft of the final report was shared with all of them for validation and comments².

The report is structured in three parts. The first part discusses the international and EU legal framework against which the EU member States have established the coverage that their social security systems provide to maritime professionals. Key instruments are, on the one hand, the Maritime Labour Convention, 2006 (MLC, 2006), and on the other hand Regulation (EC) No.883/2004 of the European Parliament and the Council of 29 April 2004, on the coordination of social security systems³. The latter is applicable not only to EU member States, but also to the European Economic Area (EEA) comprising Iceland, Liechtenstein and Norway, as well as to Switzerland, a member of the European Free Trade Association (EFTA) but not of the EEA. The UK's Withdrawal Agreement from the European Union extended the application of Regulation 883/2004 during a transition period that lasted until 31 December 2020. From 1 January 2021, a Protocol to the EU/UK [Trade and Cooperation Agreement](#), on Social Security Coordination governs cross-border work situations between the UK and EU member States.

Mobility with Iceland, Liechtenstein, and Norway is covered by another agreement that seems to be in line with the said Protocol⁴. The legal situation is nevertheless uncertain and to be monitored as the authorities put the new rules in practice (Verschueren, 2021). Future amendments to the provisions might also create mismatches between both coordination schemes, although the UK is expected to adjust to EU framework evolution (Roberts, 2020).

In 2016, the European Commission presented a revision of the legislation on social security coordination⁵. While discussions are still ongoing, they do not seem to affect seafarers whose concerns have not been taken into consideration. The revision is focused on social benefits claimed by economically inactive EU citizens; enhancing coordination of long-term benefits and unemployment benefits, and family benefits; as well as clarifying the interaction between Regulation 883/2004 and Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. The impact assessment has not taken either into consideration in which manner existing and proposed revised rules affect seafarers, all in all highlighting that inter-governmental bargaining does not take them into account (Golynger, 2020). Accordingly, this proposal will not be examined in depth in this report.

The international and EU/EEA/CH/UK legal analysis serves as a basis for undertaking a country analysis in the second part of this report that benefits from the findings in the first part and elaborates on the main features of these systems: who is covered, benefits provided, funding mechanisms and information gathered as to how these systems work in practice, including cooperation and coordination with other member States. This part has especially benefited from the empirical findings provided by interviewed ETF affiliates and national social security administration officers from the relevant countries.

The last part of the report summarizes the findings and the open discussion as to how to address maritime professionals' social security matters, i.e. whether the flag State principle or the residence principle should be prevalent in ordering these matters. The study finalizes with some recommendations extracted from the discussion.

¹ Ethical clearance for the research was approved by the relevant World Maritime University Research Ethics Committee.

² Many thanks to all the participants in this research who have given their time so generously to share their knowledge, expertise and insight. Of course, the usual disclaimer applies.

³ OJ [2004] L 314/1. Regulation No. 883/2004 has been amended by Regulation (EC) No. 988/2009 (OJ [2009] L 284); Regulation (EU) No. 1244/2010 (OJ [2010] L 338); Regulation (EU) No. 465/2012 (OJ [2012] L 149); and Regulation (EU) No. 1224/2012 (OJ [2012] L 349). This regulation replaced Regulation (EC) No. 1408/71 with effect as from 1 May 2010, but has nevertheless a transition period that ended on 1 May 2020 for EU nationals, and will end up on 30 March 2022 for Switzerland, and on 31 May 2022 for EEA nationals.

⁴ Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union.

⁵ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland), Strasbourg, 13.12.2016 [COM(2016) 815 final].



Part 1: International and EU legal framework

1. Background information

Although acknowledged as a basic human right, among others, by the International Labour Organization (ILO)'s Declaration of Philadelphia in 1944⁶, the United Nations Universal Declaration of Human Rights in 1948⁷, and the International Covenant on Economic, Social and Cultural Rights in 1966⁸, only about a quarter of the world population has access to comprehensive social protection (ILO, 2017, p. 7). Access is particularly challenging for those workers who cross national borders, as they may not get access to a national scheme or get access only in a limited way compared to other national or resident workers in the country (Taha, Siegmann and Messkoub, 2015). Seafarers and other maritime professionals are a case in point.

The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)⁹ provides the branches to be considered by States, to progressively achieve comprehensive protection, namely: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. However, each country tailors its social security scheme in view of its economy and medical facilities, including the determination of contributors to, and beneficiaries of, the scheme. The outcome is a variety of models that rely for their sustainability on workers, regardless of their nationality, that discharge their duties towards employers domiciled or seated in the national territory. If they provide their services in more than one country, at the same time or subsequently, conflicts are generally resolved by resorting to key principles. Namely, while contributions are to be paid to one system only at any given time, States are obliged to ensure the principles of aggregation and the maintenance of acquired rights for those workers that are in the course of acquisition, as well as the payment of benefits to beneficiaries residing abroad, the so-called portability principle.

From a practical perspective, the two essential questions are (1) to which social security scheme contributions are due, and (2) which State is obliged to ultimately pay benefits. The answers to both of them require a two-level approach in the case of cross-border workers:

- The first step is to determine the relevant State social security system, i.e. to which State contributions are due and against which State a benefit can be claimed. In the following sections, the relevant rules will be discussed as enshrined in the MLC, 2006 and Regulation 883/2004. They seek to avoid the payment of contributions to more than one system at a time. The discussion is, nevertheless, more complicated to the extent that the payment of contributions might have involved different countries during the working life of a person – as is usually the case with seafarers – and their aggregation is necessary to provide and calculate benefits by the State(s) that will ultimately provide the benefits. International communication, cooperation and coordination are thus necessary at this stage, and the conclusion of international agreements in these matters of the essence to comply with these principles.
- Once the relevant legal system has been determined, the second step is to identify the substantive provisions that set out who has to contribute to the social security scheme, what its coverage is and the prerequisites to finally cash benefits.

The following sections address the first step as it is common background for each country subject to this study, at least from a theoretical perspective.

⁶ See the ILO Declaration of Philadelphia.

⁷ See the UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 22.

⁸ See the ICESCR (993 U.N.T.S. 3). See General Comment No. 19: The right to social security (Art. 9 of the Covenant).

⁹ See the ILO Convention No. 102.



2. Establishing the applicable social security scheme¹⁰

2.1 Introduction

The challenge of seafarers and other maritime professionals is that their services are provided on board a ship that navigates through different jurisdictions and the high seas¹¹, thereby they do not carry out their activities in a territory (Carballo Piñeiro, 2015, pp. 13-17). The lack of a jurisdiction has in principle been resolved by resorting to public international law and the allocation of all matters on board a ship to the law of the flag State. Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS)¹² specifically requests States to ‘assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship’.

However, a number of factors complicate this apparently simple approach. One of them is that some countries do specifically exclude from their legislation those that do not reside in their territory while working on board a ship. A further problem arises out of the short period during which contributions are paid to a particular flag State, either because the ship changes flag or because the seafarer is employed for a voyage or on a short-term basis. In general, and due to the nature of shipping and distant fishing, workers might contribute to a number of flag States and nevertheless not receive any benefits. While State coordination would solve this problem of lack of aggregation, it would require international arrangements that are far from being straightforward. The situation is thus one where it is necessary to establish whether there is an obligation to contribute to a particular country - that can be the flag State or the residence State - or not and whether there is a bilateral treaty covering the case. Against this backdrop, and as highlighted by the Communication from the Commission of the European Communities to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Reassessing the regulatory social framework for more and better seafaring jobs in the EU¹³, social security arrangements are usually left to party autonomy and thus to private insurance.

In light of the abovementioned shortcomings, the MLC, 2006, does not rely anymore on the place of ship registration as the main responsible for social security matters, but on the seafarer’s country of residence as the one factor that is (usually) stable in his or her life. However, and although the MLC, 2006, entered into force in 2013, many countries have not implemented these provisions as of yet. This report takes a closer look at the case of the European Union where Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the ILO Maritime Labour Convention, 2006 (MLC 2006)¹⁴, ensures EU compliance with this convention although it has not been ratified by all EU Member States.

In line with Art. 94 of UNCLOS, the European Union has incorporated the flag State principle within the law applicable to social security matters, in Regulation (ECC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community¹⁵, replaced by the already mentioned Regulation (EC) No. 883/2004 of the European Parliament and the Council of 29 April 2004. Although Regulation 1408/71 is still in force on account of the transition rules, relevant provisions are nowadays enshrined in Regulation 883/2004, thereby this study will focus on the latter as interpreted by the Court of Justice. This regulation applies not only to EU member States, but also to Iceland, Lichtenstein, Norway and Switzerland. On account of the Protocol to the EU/UK Trade and Cooperation agreement, the relevant rules in Regulation 883/2004 are also applicable to coordinate social security matters between the two parties to this Agreement as of 1 February 2021.

¹⁰ This examination has been partially published in Carballo Piñeiro (2020)

¹¹ For the legal definition of high seas, see the [preamble to the United Nations Convention on the Law of the Sea](#) (UNCLOS).

¹² See the [United Nations Convention on the Law of the Sea](#) (1833 UNTS 3).

¹³ The Communication is a first phase consultation of the social partners at Community level provided for in Article 138(2) of the Treaty.

See [COM\(2007\)0591 final](#).

¹⁴ See [OJ \[2009\] L 124/30](#).

¹⁵ [OJ \[1971\] L 149/2](#).

Regulation 883/2004 has not been amended in line with the new approach taken by the MLC, 2006, as this approach is not mandatory. Standard A4.5, paragraph 4, of the MLC, 2006, establishes that ratifying countries can deviate from the seafarer’s country of residence rule and 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’.

Accordingly, the EU provisions still allocate social security matters on the basis of the flag State principle. Although an interesting development can be found in the Court of Justice’s case law where a number of cases are resolved by reference to the seafarer’s country of residence.

The exercise to be undertaken involves one third State (the UK), one EEA country (Norway), and 10 EU countries (Belgium, Croatia, Cyprus, Denmark, France, Italy, Malta, the Netherlands, Poland, and Romania). While all these countries are subject to Regulation 883/2004, the same does not apply to the UK as a third country. However, and as said, a Protocol to the EU/UK [Trade and Cooperation Agreement](#), on Social Security Coordination seems to apply the same solutions as contained in Regulation 883/2004. The following section analyses the relevant rules in the MLC, 2006, focusing the next section on the said regulation.

2.2 Social security in the ILO Maritime Labour Convention, 2006

The Seafarers’ Bill of Rights – as the MLC, 2006, is also known – discusses social security protection within the framework of Title 4. In line with C102, Regulation 4.5 requires ratifying countries to take steps to achieve progressively comprehensive social security protection for all seafarers, i.e. States are granted some flexibility to take into account their national circumstances. To start with, they have to provide at the very least three of the nine above-mentioned branches – preferably, medical care, sickness benefit and employment injury benefit¹⁶ – at the time of ratification¹⁷. In doing so, they are obliged to ensure that seafarers benefit from social security protection no less favourable than that enjoyed by shore-workers¹⁸.

Regulation 4.5 of the MLC, 2006, does not allocate the responsibility to provide social security protection to any particular State, but to all member States. It is the Code of the MLC, 2006, that deals with this issue in an innovative manner. Deviating from the general rule based on Article 94 of UNCLOS, the primary obligation in these matters is now placed upon labour-supplying countries while flag States retain a subsidiary obligation to ensure that all seafarers have protection. In this vein, paragraph 3 of Standard A4.5 reads as follows:



‘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’ (emphasis added; see McDonnell, Devlin and Doumbia-Henry (2011); Chaumette (2016); Doumbia-Henry (forthcoming)).

Reinforcing the new role of labour supplying countries, Title 5 on Compliance and Enforcement lays down Labour-Supplying Responsibilities in Regulation 5.3, including the implementation of the Convention’s requirements as to the social security protection of seafarers who are its nationals or who are resident or otherwise domiciled in their territory.

All ratifying countries to the MLC, 2006, are under the obligation of submitting a Declaration at the time of ratifying the Convention, specifying the branches for which they provide social security protection to resident seafarers¹⁹. Thereafter, the information is posted on the ILO public website, making it possible to learn about the branches to which EU member States have committed. Remarkably, member States can establish the protection under Regulation 4.5, paragraph 1, as appropriate, to be contained in laws or regulations, in private schemes or in collective bargaining agreements or in a combination of these²⁰.

¹⁶ See [Regulation 4.5, Guideline B4.5, para. 1, of the MLC, 2006](#).

¹⁷ See [Regulation 4.5, Standard A4.5, para. 2, of the MLC, 2006](#).

¹⁸ See [Regulation 4.5, para. 3, of the MLC, 2006](#).

¹⁹ See [Standard A4.5, paras. 2 and 10 of the MLC, 2006](#).

²⁰ See [Standard A4.5, para. 7, of the MLC, 2006](#).

It is nevertheless relevant that the number of branches of social security specified by some EU member States is in contrast with the number of branches that they allegedly provide to shore-workers. For example, an examination of *The Social Security Programs through the World* database reveals that some countries have programmes dealing with the eight branches covered by the database while they offer less to seafarers²¹. In a similar vein, the reading of the comments made by Committee of Experts on the Application of Conventions and Recommendations (CEACR) regarding the application of the MLC, 2006, by EU member States indicate that some countries acknowledge that they do not respect the equal treatment principle between seafarers and shore-based workers. Specifically, Belgium, Bulgaria, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Poland and Spain have not updated their legislation to fully include non-national seafarers residing in the country who work on board foreign-flagged ships²². The CEACR's comments reveal that the disparity in treatment also applies to non-national seafarers residing in their territory who work on that country's registered ships, as occurs apparently in Bulgaria, Cyprus, Greece, Ireland and Lithuania.

The latter not only infringes Regulation 4.5, paragraph 3, of the MLC, 2006, but also other international and European instruments that lay down the right to equal treatment for social security benefits and non-discrimination. While the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118)²³ has been ratified by Denmark, Finland, France, Germany, Ireland, Italy and Sweden, all EU member States are party to the European Convention on Human Rights (ECHR)²⁴. According to the ECtHR, this Convention prohibits all forms of discrimination on grounds of nationality with respect to the right to social security, unless they are justified by 'very weighty reasons'²⁵ (Verschuere, 2018, p. 112).

In fact, the MLC, 2006, is fully conscious that it will take time until labour-supplying countries are in a position to provide full social security coverage to all seafarers residing in their territory, including those working on board foreign-flagged ships. Hence, flag States are not exempted from ensuring social security protection to seafarers working on board their ships, at least in the terms of Standard A4.5, paragraph 5 of MLC, 2006. This provision requires that all these seafarers have access to the benefits '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'.

The reference to Regulation 4.1 on medical care and Regulation 4.2 on shipowners' liability in the event of death and long-term disability – that are considered supplementary to social security protection in the first paragraph of Standard A4.5 –, serves to highlight that the responsibility of flag States in Regulation 4.5 is a secondary one. In this regard, the primary responsibility lies with labour supplying countries. In spite of this hierarchy, Standard A4.5, paragraph 6, makes it clear that flag States are also obliged to ensure adequate coverage under the social security branches. As indicated by the CEACR as regards one case,

'the Committee notes the Government's indication that it has not adopted any measures for providing benefits to non-resident seafarers working on ships flying its flag who do not have adequate security coverage. The Committee recalls that although the primary obligation rests with the Member in which the seafarer is ordinarily resident, under Standard A4.5, paragraph 6, Members also have an obligation to give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the nine branches of social security. The Committee requests the Government to provide information on any measures adopted under Standard A4.5, paragraph 6'²⁶.

In the realm of the European Union, this reminder has been given to Belgium, Greece, Italy, Latvia, and Lithuania.

21 See *Social Security Programs through the World, Europe 2018*. See also ISSA Country profiles

22 CEACR's comments can be found at the MLC [database](#) run by the ILO website. For this report's purposes, the MLC database has been consulted on 21 September 2021.

23 See the full text of *ILO Convention No. 118*.

24 See *213 UNTS I-2889*.

25 See ECtHR, Case 40892/98, judgment of 19 September 2003, *Koua Poirrez v France*, para. 46; ECtHR, Case 55707/00, judgment of 18 February 2009, *Andrejeva v. Latvia*, para. 87.

26 See *ILO Website, MLC Database, Greece*. Comments by the CEACR.

Regulation 4.5 overlaps to a certain extent with Regulations 4.1 on medical care on board and ashore, and Regulation 4.2 on shipowner's liability for the financial consequences of sickness, injury or death, that lay down a private insurance scheme covering *grosso modo* medical care, sickness benefit and employment injury benefit. This overlapping seems to even further increase the flexibility of the MLC, 2006's provisions, meaning that the seafarer should be covered by his/her country of residence; in case of default, by the flag State; and always by the shipowner in the event of occupational injury, disease or death as the latter is obliged to pay for medical costs, including hospital treatment, medicines and lodging until recovery, wages on board and ashore as agreed, and compensation in case of death or long-term disability. To this end, Standard A4.2.1, paragraph 8 et seq, requests flag States to establish a system of financial security that provides for the said items. This system might be in the form of insurance or a social security regime.

LABOUR SUPPLYING COUNTRIES

FLAG STATES

Regulation 4.5 Standard A4.5. 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 multi-lateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.

Regulation 5.3 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.

Regulation 4.5 Standard A4.5. 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.

Regulation 4.1 – Medical care on board and ashore

Regulation 4.2 – Shipowner's liability

Table 1: MLC, 2006 provisions on social security

As is shown in the table above, the MLC, 2006 still places significant responsibility upon flag States, and not only in default of the seafarer's country of residence' compliance with Regulation 4.5. Flag States are obliged to provide medical care on board and ashore, as well as compliance with shipowner's liability. Beyond these obligations, they have other obligations in accordance with international law that is not made explicit in the MLC, 2006, but C102 might provide a good term of reference in these matters. Moreover, the MLC, 2006 recommends, where seafarers are potentially subject to more than one national legislation covering social security, that both States

'cooperate in order to determine by mutual agreement which legislation is to apply, taking into account such factors as the type and level of protection under the respective legislations which is more favourable to the seafarer concerned as well as the seafarer's preference'²⁷.



The Convention actually recommends flag States to verify that shipowners are meeting their social security obligations, in particular if they make any contributions that may be required by other countries under their national social security systems, in respect of seafarers²⁸. In addition to this verification, flag States are recommended to review the branches of social security protection provided to seafarers not residing in their territories, but serving on board their ships, ‘with a view to identifying any additional branches appropriate for the seafarers concerned’²⁹.

Nevertheless, the said allocation of responsibility upon flag States is at odds with the interplay between shipowner’s liability and social security, as illustrated by paragraphs 4 and 6 of Standard A4.2.1, that do not refer to a particular State while the mention of flag State is specific in other paragraphs:

- **Standard A4.2.1, para. 4:** ‘National laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness’.
- **Standard A4.2.1, para 6:** ‘National laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities’.

Hence, and while stressing the interplay between flag States and shipowners, the MLC, 2006 does not sufficiently make the interplay between the seafarer’s country of residence and shipowners clear. This interplay is relevant because of the two abovementioned paragraphs that acknowledge the (potential) overlapping between some social security branches and shipowner’s liability in the event of seafarer’s sickness, injury or death. And it is also relevant because it raises the issue as to which country shipowners and seafarers have to socially contribute. Regulation 5.3 does not address this issue either.

Although not delving into all possible connections among them, it seems that Regulations 4.1, 4.2, 4.5 and 5.3 aim to socially protect seafarers by ensuring, first, a minimum represented by at least medical care, sickness benefit and employment injury benefit; and second, by requesting the coordination and cooperation between the seafarer’s country of residence and the flag State as to the provision of a comprehensive social security.

2.3. The EU social security coordination framework

The EU/EEA/CH/UK social security coordination framework rests on the definitions of C102 (Jenard, 1979), but it does not seek to harmonize these matters within coordinated countries. In practice, each country determines its own social security scheme, which usually is characterized by two factors: the involvement of public management and, in particular, employers’ and/or employees’ obligation to pay into one social security scheme. One feature is of particular significance for seafarers: the regulations only apply to compulsory schemes, setting aside non-statutory complementary insurance schemes or special schemes for self-employed persons and collective bargaining agreements unless they have been made compulsory by national legislation (Carril Vázquez, 2017)³⁰. This feature has a negative impact on seafarers’ rights, to the extent that they cannot avail themselves of these regulations to gain access to the benefits provided by private insurance schemes³¹.

The system is further based on the prohibition of discrimination on grounds of nationality enshrined in Articles 18 and 45 of the Treaty on the Functioning of the European Union (TFEU)³². Coordination provisions apply to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors³³.

28 See Guideline B 4.5, para. 7, of the MLC, 2006.

29 See Guideline B 4.5, para. 5, of the MLC, 2006.

30 To fill the gap, other EU instruments have been released that have been critically analysed by Del Sol and Rocca (2017): Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, [1998] OJ L 208/46; Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, [2003] OJ L 235/10; and Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, [2014] OJ L 128/1.

31 Instead, they must rely on other pieces of legislation that are not tailor-made to their needs such as Directive 2014/50/UE, or on the Court of Justice as has already been the case for other international transport workers. See Case C-379/09, judgment of 10 March 2011, *Maurits Casteels v British Airways plc*.

32 OJ [2012] C 326/47.

33 See Article 2 of Regulation (EEC) 1408/71 and Regulation (EC) No. 883/2004. Both provisions also indicate that they apply to the abovementioned workers’ survivors.

These provisions include nationals of third countries residing within the EU/EEA/CH by virtue of Council Regulation (EC) No. 859/2003 extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality³⁴. These provisions, nevertheless, give priority to international agreements between participant States already concluded before its application if they are more favourable to workers. Similarly, they do not preclude new agreements if concluded under certain conditions³⁵. The preferred connecting point is the workplace, although some significant concessions to the habitual residence principle have been made through the years and the case law of the Court of Justice, i.e. the *lex loci laboris* is usually the one governing social security matters (Christensen & Malmstedt, 2000; Cornelissen, 2009). Proposals to change the relationship between the two laws have nevertheless also been made (Pennings, 2005).

The most relevant provisions when it comes to coordinating compulsory social security systems within the EU are presently articles 11 et seq. of Regulation 883/2004. As indicated, these provisions do not harmonize substantive aspects of social security protection, but only determine the Member State to which contributions have to be paid in cross-border cases. Once the responsible member State has been identified, its legislation establishes who is covered by its system and to what extent. In this manner, the regulation avoids positive and negative conflicts, and also provides for the portability principle that ensures that acquired rights to benefits are retained and that these are translated into benefits where appropriate.

In shipping, the main rule is laid down in Regulation 883/2004, article 11(4), according to which,



‘[f]or purposes of this title, an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a Member State shall be deemed to be an activity pursued in the said Member State’.

The flag State jurisdiction applies regardless of the ship’s operation on the territorial sea of a third State. In *M. J. Bakker and Minister van Financiën*³⁶, the Court of Justice addressed the case of a Dutch seafarer residing in Spain who was providing services for a Dutch-seated company on board Dutch-flagged dredgers operating in the territorial sea of China and the United Arab Emirates. According to the Court of Justice,



‘neither respect for the sovereignty of the coastal State nor the United Nations Convention on the Law of the Sea requires that a worker in Mr Bakker’s situation be deprived of the benefit of the social insurance provided for, in accordance with Regulation No. 1408/71, by the Member State whose flag the vessel flies, when that vessel is located in the territorial waters of a State other than that Member State’³⁷.

By the same token, the flag State jurisdiction prevails over the seafarer’s country of residence as indicated by the Court of Justice in the *Salemink* judgment³⁸. The case concerned a Dutch employee working on a gas extraction platform on the Dutch continental shelf who had been excluded from the Dutch social security system because he was residing in Spain. The Court of Justice reminded that the relevant factor is the habitual workplace and not the worker’s residence. The latter is an additional factor that cannot be considered when establishing who is covered by the social security system of a member State³⁹. The case is particularly important for those countries whose systems are financed via taxes and nevertheless cannot require residence to join their social security scheme.

34 See OJ [2003] L 124/1.

35 See Article 8 of the Regulation No. 883/2004.

36 Case C-106/11, judgment of 7 June 2012, *M. J. Bakker v Minister van Financiën*.

37 Case C-106/11, *Bakker*, para. 29. See also para. 28.

38 Case C-347/10, judgment 17 January 2012, *A. Salemink v. Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, para. 32-35.

39 Case C-347/10, *Salemink*, para. 40-44.



Nevertheless, the seafarer's residence might play a role under given circumstances⁴⁰. Pursuant to article 11(4) of Regulation 883/2004,

'a person employed on board a vessel flying the flag of a Member State and remunerated for such activity by an undertaking or a person whose registered office or place of business is another Member State shall be subject to the legislation of the latter Member State if he resides in that State. The undertaking or person paying the remuneration shall be considered as the employer for purposes of the said legislation'.

Hence, if both a shipowner and a seafarer reside in one and the same country, the law governing social security matters would be that of the seafarer's country of residence.

The same applies if the vessel is not flying the flag of a member State as concluded by the Court of Justice in the *SF* case⁴¹. A Latvian citizen residing in Latvia was requested to pay social security contributions to the Netherlands because he had been working for a Dutch-based company on board a vessel flying the flag of Bahamas that, during the working period on board, sailed over the German part of the continental shelf of the North Sea. The claim was appealed by the seafarer arguing that the relevant system was that of his residence in accordance with article 11(3) of Regulation 883/2004, as the latter is applicable in default of any other criteria. The Court of Justice confirms, first, that the case is covered *ratione personae*⁴² by the regulation – to the extent that both employer and employee are residing within the EU –, and second, the applicability of the said provision for cases in which services are provided on board ships flagged in third States. This case has been nevertheless criticized by some social security administrations interviewed in this research because it is not in line with their *modus operandi* based on the workplace principle and thus where the employer is seated. However, AO-Norway-1 reminded that the system could be analysed from the other perspective considering it residence-based, and accordingly the application of the seafarer's residence principle seems to be more appropriate than that of the employer's.

If the seafarer is a mobile worker, who is constantly changing employers, vessels and territories⁴³, the country of habitual residence is again preferred provided that a substantial part of their activity is undertaken in that country. If not, the applicable system would be that of the member State where the registered office or place of business of the employer is located, as indicated by the Court of Justice in the *Kik* judgment⁴⁴. This case involved a Dutch seafarer residing in the Netherlands that was first compulsorily insured in the latter country as he was employed by a Dutch company until 31 May 2004. From 1 June 2004, he became an employee of a company seated in Switzerland, but to provide the same services as for the Dutch company on board a Panamanian-flagged pipe-laying vessel operating outside the territory of the EU (approximately three weeks above the continental shelf of the United States and approximately two weeks in international waters) and then above the continental shelf of the Netherlands (periods of one month and approximately one week) and of the United Kingdom (a period of slightly more than one week). While his wages were subject to income tax in the Netherlands, the Court of Justice found that no substantial part of the services were provided in this country and prioritized the residence of the Swiss employer as the factor that established the applicable social security scheme⁴⁵. Finally, the Court of Justice took a pro-worker approach reminding that, if the legislation of the Member States in which the employer is seated does not provide for the employee to be insured under any social security scheme, the legislation of the Member State of the employee's residence will apply⁴⁶. The same applies in cases involving several employers with registered offices or places of business in different Member States.

As shown, and although the EU/EEA/CH/UK social security coordination framework has not been amended to be in line with Standard A4.5, paragraph 3, of the MLC, 2006, the Court of Justice treats a remarkable number of cases in accordance with the residence principle. The issue would be then whether it is necessary to derogate the flag State principle in a highly coordinated framework. Setting aside open interpretation issues – in particular as regards to the meaning of the social security and social assistance concepts –, the main challenge arising out of this legal framework is how to achieve an effective administrative cooperation.

⁴⁰ Case C-347/10, *Salemink*, para. 32-35.

⁴¹ Case C-631/17, judgment of 8 May 2019, *SF v Inspecteur van de Belastingdienst*.

⁴² *Ratione personae* refers to a legal instrument's personal scope of application, i.e. who is covered by the regulation, while *ratione materiae* indicates a legal instrument's substantive scope of application, i.e. the matters included on it.

⁴³ Regulation No. 883/2004, article 13.

⁴⁴ Case C-266/13, judgment 19 March 2015, L. *Kik v Staatssecretaris van Financiën*.

⁴⁵ Case C-266/13, *Kik*, para. 58.

⁴⁶ Case C-266/13, *Kik*, para. 63.

Although the EU regulations clearly lay down the obligation to cooperate, it takes much time and effort to actually get Member State administrations to cooperate (Schiek et al., 2015, p. 74)⁴⁷, as the development of the Electronic Exchange of Social Security Information (EESSI)⁴⁸ and in particular the establishment of the European Labour Authority⁴⁹, illustrate. Yet, migrants can find it hard to join a social security scheme, due to not only information issues and the administrative burden, but because the required criteria make access to benefits difficult (Carril Vázquez and Fotinopoulou Basurko, 2018; Verschueren, 2020). In the case of seafarers and other maritime professionals, the allocation of these matters to their country of residence would not solve all coordination issues, but would certainly simplify matters.

In the abovementioned cross-border cases, the member State whose legislation is applicable is obliged to issue a Portable Document A1 (PD A1). The PD A1 proves, first, that the social security legislation of the issuing member State applies, and second, confirms that the person concerned has no obligations to pay social security contributions in another member State. The issuance of this certificate is dependent on the employer's or the person's legal obligation of informing the competent authorities about their planned transnational activities, whenever possible before these activities takes place. Subsequently, after verification of several conditions, a PD A1 will be provided by the competent authorities⁵⁰. In practice, however, authorities are not always informed about these transnational activities. Consequently, there might be a discrepancy between the number of PDs A1 issued and the actual size of persons providing services abroad.

2.4. Summary

The examination of the Regulation 883/2004 undertaken above reveals that there is one case not covered by the regulations, the situation in which the seafarer resides in an EU/EEA/CH/UK country, but works on board a third-country flagged ship for a shipowner also based in a third country. In this situation, the provisions of the MLC, 2006, as implemented in the relevant country, entered into play and the main connecting point is that of the EU/EEA/CH/UK country of the seafarer's residence.

SEAFARERS RESIDING IN ANY EU/EEA/CH/UK COUNTRY AND WORKING ON BOARD:

	FLAG STATE PRINCIPLE	HABITUAL RESIDENCE PRINCIPLE
EU/EEA/CH/UK-flagged ships	Seafarers residing in any EU/EEA/CH/UK country	Exception to flag State principle <i>if shipowner and seafarer reside in the same EU/EEA/CH/UK country</i>
Third-country flagged ships		The abovementioned exception also applies here <i>if shipowner and seafarer reside in the same EU/EEA/CH/UK country</i> If both shipowner and seafarer reside in different EU/EEA/CH/UK countries, then: - HR of seafarer if a substantial part of the work is done there - Otherwise, HR of shipowner If only seafarer resides in an EU/EEA/CH/UK country, this principle is still applicable on the basis of MLC, 2006.

Table 2: European based seafarers and social security coordination

⁴⁷ See Regulation 883/2004, article 76.

⁴⁸ More information on EESSI is available on the [European Commission website](#).

⁴⁹ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (Text with relevance for the EEA and for Switzerland), [2019] OJ L 186/21.

⁵⁰ Under the CJEU case-law (see e.g. Case C-202/97, FTS, paragraph 51 EU:C:2000:75) the competent authority needs to carry out a proper assessment of the facts relevant to the application of the rules for determining the applicable social security legislation and, consequently, to guarantee the correctness of the information contained in the PD A1.

Part 2: Country analysis

1. Introduction

The countries selected for examination are representative of the different welfare traditions within Europe. Social security schemes are complex systems tailored to the tradition of each country and the financial approach taken by the latter to it, that makes each system also unique. Different taxonomies have been attempted with some of them pointing out the divergent approach to these matters depending on the in- and out-migration history of the relevant country (Vintila & Lafleur 2020, p.18). Other taxonomies depend on the general features of the system such as those classified as part of the Nordic social-democratic welfare model, because of their universalism, solidarity, equality, strong but limited safety nets, high quality public healthcare services and high shares of social protection expenditure (Arts and Gelissen 2002; Kvist et al. 2012; Rice 2013). A continental corporatist model influenced by the Bismarkian insurance schemes has been identified in Austria, Belgium, Luxembourg, Germany, France and the Netherlands. Other principles applicable to this system include generous unemployment benefits and general benefits based on social contributions or occupational status (Arts and Gelissen 2002; Palier 2010; Österman et al. 2019). Ireland and the UK would be included within the Anglo-Saxon regime where universalism is weak, but there are free healthcare services and some social benefits are provided to individuals depending on the means test. Southern European countries (Spain, Italy, Greece, Portugal or Cyprus) shared a regime based on institutional fragmentation and family support, although they have a developed social assistance system and generous old-age pensions provisions (Ferrera 1996; Arts and Gelissen 2002). As to Central and Eastern European countries, they also rely on family support, but pensions are low with hybrid health care schemes and strong emphasis on redistribution to prevent poverty (Österman et al. 2019).

The different approaches provide room for different combinations of public and private schemes, but also for the role that taxes, either general or earmarked, play in financing the regime in addition to social contributions. For example, and building upon the World Bank's classification,⁵¹ pensions can be organized in three pillars: a first pillar that is run by the State and funded through contributions linked to earnings, on a pay-as-you-go basis or through general tax revenues; a second pillar that relies on occupational pension plans funded by employers and/or employees; and a third pillar based on personal savings plans. Legal divergence on these matters is certainly significant across countries with many not providing any type of social security benefits to their citizens.

These fundamental decisions affect cross-border workers such as seafarers because residence in the country - and not contributions - might be the essential factor in getting access to some benefits that are financed via taxes, i.e. while all residing in the country get access to family benefits, they are not provided to non-residents. However, coordination rules might also have some undesirable results because of the mismatch between rules in the country of resident and that of employment that situated the worker either in a limbo or in a disadvantageous position as a result of favouring the competent country, i.e. that of employment (Esser & Pennings, 2020). It is interesting to note that international instruments might provide some room for flexibility in order to address these situations by way of agreements concluded between the concerned administrations. A case in point is Article 16 of Regulation 883/2004 that entitles EU/EEA/CH/UK social security administrations to conclude common agreements providing for exceptions to the conflict rules laid down in Arts. 11 to 15 thereof.

Access to social protection by migrants has been mainly studied from a receiving country perspective. Recent literature is starting to pay attention to the role of sending States by researching the interplay between social protection and migrant studies. However, workers at sea still remain a special category. First, while working at sea, they do not change their residence, i.e. the question arises as to whether there is a receiving State in their case. They do not change nationality either and the latter has been the main factor in providing access to social security systems. However, and on account of the migration challenge, residence has indeed become an important factor in getting access to some benefits. Be that as it may, both factors might hamper seafarers' full integration into a system, even in those cases in which contributions are paid. Hence, there should be a clear definition/explanation as to the benefits available to seafarers in these situations.

⁵¹ World Bank, *Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth* (OUP, 1994) 15.

Second, while there is a sending State – labour-supplying country in the MLC, 2006’s terminology -, the fact that workers at sea and their families are still living in the country raises also the question as to whether they are taken into consideration in their migration policies and strategies. Residence in the country implies that they might get access to benefits based on this factor where appropriate. However, if they have been paying social security contributions abroad, they might get lost if there is no administrative coordination among countries.

2. Structure of country analysis

The examination of the international and legal framework has provided the ground for undertaking a country analysis based on: (i) the analysis of whether all seafarers residing in the country are covered by their social security system; (ii) a basic understanding of the relevant system paying attention to the branches provided as well as its funding; and (iii) insights on whether there is an effective administrative cooperation across member States, i.e. whether particular problems have arisen and how they have been solved.

The seafarers’ coverage by a social security system is basically determined by Regulation 883/2004. There is one case not covered by the Regulation, though. The relevant social security system for seafarers residing in a member State, but working on board a ship flagged in a third country for an employer also residing in a third country, is to be determined by the MLC, 2006, as implemented by the applicable national legislation, i.e. the country of the seafarers’ residence. In this situation, the conclusion of international agreements on social security matters is of particular relevance in order to ensure an effective administrative cooperation. The country analysis includes the examination of the agreements concluded with third countries to understand whether seafarers have been taken into consideration. Another important point is whether the seafarer has been recruited through a recruitment and placement service seated in his/her country of residence or in another EU/EEA/CH/UK member State because the relevant country might request it ensuring their coverage by the relevant social security system.

In view of this case, the following table including all variables has been developed:

MEMBER STATE X

On board member State X flagged ships		Seafarers residing in member State X	
Seafarers residing in EU/EEA/CH/UK member State regardless of nationality, admitted to this member State social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from member State X social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from member State X social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country. 2. If mobile and a substantial part of the work is not provided in member State X, excluded from in favour of the shipowner’s seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i> 3. If shipowner in a third country, national rules apply. In this situation, two factors might be important: (i) international agreements (ii) if the seafarer has been recruited through a recruitment and placement service seated in his/her country of residence or the EU/EEA/CH/UK.



BELGIUM



BELGIUM

On board Belgian flagged ships		Seafarers residing in Belgium	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Belgian social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Belgian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Belgian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Belgium, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. Article 1 of applicable Law 7 February 1945 refers to seafarers working on board Belgian ships, hence this case is excluded from the Belgian social security unless - seafarers have been recruited via a Belgian RPS - and/or there is a bilateral agreement.

The system is applied in line with Regulation 883/2004 and the provisions of the Statutory Order of 7 February 1945 relating to social security for seafarers in the merchant navy. The latter is applicable to seafarers working on board Belgian ships, including those not residing in the country as long as they are covered by the said regulation or an international agreement with the relevant countries of residence. Belgium has concluded bilateral treaties with the following countries: Albania, Algeria, Argentina, Australia, Bosnia-Herzegovina, Canada (also a separate agreement with Québec), Brazil, Chile, DR Congo, the Philippines, India, Israel, Japan, Kosovo, FYR Macedonia, Moldova, Morocco, San Marino, Montenegro, Serbia, Tunisia, Turkey, Uruguay, the United States and South Korea. Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with Bosnia, Chile, Morocco, Turkey, Uruguay and the United States.
- The seafarer's residence is employed in the agreements with Australia, Philippines, India and Macedonia.
- The registered location of the employer is the connecting factor used in the agreements with Canada, Quebec, Japan and South Korea.

According to the information provided at the [official site](#), Belgium mainly abides to the flag principle with concessions to the seafarer's residence as indicated in Regulation 883/2004 and in the abovementioned bilateral agreements. Prior to Regulation 883/2004 and still in force, it is to highlight the Belgium-Luxembourg Accord of 25 March 1991, according to which the seafarers registered in the Belgian Pool of merchant seafarers are subject to the Belgian social security regime if they are employed on board a ship that is operating under the Luxembourg flag.

As to seafarers residing in Belgium and working on board foreign-flagged countries that are not EU/EEA/CH/UK members and with which no bilateral treaty has been concluded, the national legislation does not apply unless a number of conditions are met:

- The SEA is concluded via a **Belgian mediating shipping company** that is ultimately responsible for complying with the social security obligations to the NSSO as it is considered the shipowner for these purposes.
- This Belgian mediating shipping company must submit an **application for subjection** of these ships to the National Social Security Office (NSSO)'s management committee for seafarers.
- The seafarers concerned must be registered in the **Pool list** indicated in article 1bis, 1° of the Legislative Order of 7 February 1945. The seafarers may not be subjected to a foreign social security regime, in this case of the flag state.
- The NSSO's management committee for seafarers shall make a decision on the application. This subjection may be permitted for a **maximum period of one year**, but can be **renewed annually**.

Those seafarers residing in Belgium, but not complying with the abovementioned requirements are not covered by the Belgian social security regime. The comments made by the CEACR seem to confirm this conclusion⁵².

Belgium is also among those countries that exclude seafarers not residing in EU/EEA/CH/UK from their social security system. In compliance with its obligations as a flag State, Belgium requires shipowners to declare whether they provide decent insurance to these seafarers. Nevertheless, it does not go as to compare whether they are provided the same branches as Belgian-based seafarers or whether benefits are comparable.

According to MISSOC and as of January 2021,⁵³ the general scheme for employees is mainly managed by the NSSO and predominantly financed by social contributions. Other financial resources include State subsidies, alternative financing, and other revenues. Contributions on car insurance and hospital insurance as well as charge on the turnover of pharmaceuticals are used to finance the healthcare budget. Both the federal State and the regions are involved in financing the scheme through public funds from general resources. Social contributions depend on an overall rate and the funding of benefits under the principle of overall management is based on a pay-as-you-go scheme.

⁵² "The Committee recalls that *Standard A4.5, paragraph 3*, provides that 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 provision therefore does not limit this responsibility to agreements concluded with a Belgian shipowner or employer, as section 30 of the Act of 3 June 2007 appears to indicate. **The Committee requests the Government to adopt the necessary measures in order to extend the protection provided under Standard A4.5, paragraph 3, to all seafarers ordinarily resident in its territory and who work on board foreign-flagged ships.**"

⁵³ See also Melin, P. (2020). Migrants' Access to Social Protection in Belgium. In Lafleur, J-M, Vintila, D. (eds.). (2020). *Migration and Social Protection in Europe and Beyond (Volume 1). Comparing Access to Welfare Entitlements*. Heidelberg: Springer, 49-63.

Table 4: Belgium



Seafarers fall under a special social security system under a management committee of seafarers of the NSSO. The system requires seafarers to be registered in a Pool List that must meet the following criteria:

- **reside in Belgium** and/or be an EU citizen. Non-EU citizens can also register, but only in the event of shortage of EU citizens. Access to the Pool List is restricted to one year for the latter, but it can be renewed on a yearly basis.
- have been found **physically and mentally suitable** in a medical examination,
- hold an **internationally valid vaccination certificate** that shows compliance with all requirements to work in the profession,
- be able to present a **copy of your criminal record** or other required information relating to moral requirements, and
- have the **capacity** to do the job for which you are applying.

Social security contributions are paid in accordance with the seafarer's salary, including standard pay, overtime and other allowances allocated to the seafarer.⁵⁴ Contribution calculation depends on whether the ship is registered on a EU/EEA/CH/UK member State registry (with a ceiling for contribution to the pension scheme), and time spent on a war zone or risk of piracy. Further special contributions or non-statutory contributions are applicable.⁵⁵

The principle of co-payment by employer and employee is applicable.⁵⁶ However, shipowners with an operating base in the territory of the Flemish Region or in another EEA Member State can benefit from the reductions in social security contributions, and ships that are registered in a EU/EEA/CH/UK member State register are exempt from employer contributions with regard to all branches and schemes within which the NSSO organises collection, with the exception of:

- **basic employer contribution** (overall employer's contribution): 0.05%
- **asbestos fund**: 0.01% (only owed for work from 01/01 – 30/06 for each calendar year)
- **annual holiday** (shipmates/shoregangers): 15.72%
- **non-statutory pensions** (on the contributions deposited by the employer: 8.86%
- **non-recurrent result-based benefits**: 33%

Shipowner are nevertheless responsible for declaration on work on board and calculations of contributions on a three-month basis. The obligation binds all shipowners regardless of their location as long as they employ people covered by the Belgian social security system. There are enforcement problems as regards to those shipowners based in third countries although they are not many because most shipowners operate in Belgium via a RPS.

As to benefits, Belgium has ratified C102, although its Part VI is no longer applicable as a result of the ratification of Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). The same applies to Part III after ratification of Medical Care and Sickness Benefits Convention, 1969 (No. 130) in 22 Nov 2017. The MLC, 2006 has also been ratified.

40 Case C-347/10, *Salemink*, para. 32-35.

41 Case C-631/17, judgment of 8 May 2019, *SF v Inspecteur van de Belastingdienst*.

42 *Ratione personae* refers to a legal instrument's personal scope of application, i.e. who is covered by the regulation, while *ratione materiae* indicates a legal instrument's substantive scope of application, i.e. the matters included on it.

43 Regulation No. 883/2004, article 13.

44 Case C-266/13, judgment 19 March 2015, L. *Kik v Staatssecretaris van Financiën*.

45 Case C-266/13, *Kik*, para. 58.

46 Case C-266/13, *Kik*, para. 63.



According to the declarations made by the country to ILO, the following branches are provided by their social security scheme:

	C102	MLC, 2006
medical care	X	X
sickness benefit	X	
unemployment benefit	X	X
old-age benefit	X	X
employment injury benefit	X	X
family benefit	X	X
maternity benefit	X	X
invalidity benefit	X	X
survivors' benefit	X	X

Table 5: Belgium, adherence to international treaties

As said, the Belgian social security system has an extensive coverage and is funded by the payment of social contributions by employers and employees that contribute to a fund used to pay the following:

- allowances in the event of sickness
- unemployment benefits
- allowances in the event of incapacity for work through sickness or invalidity
- allowances in the event of accidents at work
- allowances in the event of industrial disease
- family allowances
- pensions

The government pays other supplementary support systems:

- income support
- the income guarantee for the elderly
- the guaranteed family allowance
- payments for people with a handicap
- payments for help to the elderly


More specifically, seafarers covered by the Belgian system are entitled to unemployment benefit depending on time worked on board ships covered by the system, i.e. at least, a minimum of 150 working days during the one-year period prior to the unemployment situation. Illness and disability, and pensions are also covered. However, the system does not provide medical care or sickness benefits to seafarers during their time onboard relying on shipowner's liability. The payment of sickness benefits by the Belgian system will start only after disembarkation.

As to an effective administrative cooperation, the ETF and the Belgian trade union organization BTB ABWV **reported** on October 2020, the cases of several seafarers residing in Belgium and employed under Cyprus and Madeira flagged vessels who could not benefit from the protection of the social security regime of the flag State allegedly applicable in accordance with Regulation 883/2004⁵⁷.

57 ETF, "ETF submits a case concerning social security of Belgian seafarers to the attention of the ELA", 19 October 2020.



Before that, the Belgian administration had already invoked the EU coordination mechanisms, however the problem had not been solved, i.e. a number of seafarers (not only Belgian seafarers, but also Polish and Romanian ones) do not have access to a social security system because they do not get access to the Cypriot or Madeiran one on a practical basis. AO-Belgium-1 mentioned that Cyprus did not have sufficient human and material resources to manage the system. As to Portugal, there was no answer. During interviews, it was questioned whether these seafarers were allowed to join the Belgian system instead in accordance with Article 16 of the EU Regulation.

 **By principle, we don't accept (the application of Article 16). Otherwise, we accept that Cyprus has to do nothing. And for me the problem is also when your country doesn't want to provide social security is demeaning. In Belgium is so cheap also and we do not want to pay for other countries' obligations, I think, we have the costs, but not the benefits (AO-Belgium-1, 31.51)**

Shifting the responsibility from the flag State to Belgium is not in line with the operation of Belgian system that relies on State aid for shipowners to attract/retain them, i.e. a reduction in social security contributions is applied that makes social security inexpensive for these shipowners, i.e. shifting the system would amount to have the costs, but not the benefits. More specifically, and as specified in writing by AO-Belgium-1: 'In accordance with the state aid guidelines, to promote employment under the European flag, Belgium has introduced reductions in social contributions while preserving the social rights of seafarers. Each EEA country has to bear its cost of the fiscal and social law reductions while preserving the social rights of the seafarers. If Belgium would accept that with the application of Article 16 seafarers working under the flag of Cyprus are brought into the Belgian social security system we should accept this (non discrimination) for all EU seafarers in a similar situation. This is financially impossible. Belgium should not bear the social cost of any tax and social benefit regime in another EEA member state'.


As to how to solve the problem raised by Cyprus or Madeira not providing access to their social security systems, it was indicated that the coordination mechanisms have not worked because of their limited power. As abovementioned, the case was then brought to the attention to ELA, also by the trade unions, but again, the power limitation remains an issue. Hence, the suggestion was made to invite seafarers to go to court in these countries and maybe getting to the Court of Justice.

 **People lose all their rights, in Belgium too. The social partners demand why don't you give them insurance in Belgium? But if you start doing that, it's against the European law and against the whole idea of coordination [AO-Belgium-1, 37.04]**

On 19 March 2021, a letter was sent by ELA to the relevant Belgian authorities and social partners highlighting its power to trigger a concerted or joint inspection is mentioned that entrusted the agency to trigger discussions with Belgian, Cypriot and Portuguese authorities as regards to the abovementioned cases. The cooperation between the Belgian and the Cypriot authorities included their national participants at the Administrative Commission for the Coordination of Social Security Systems as well as the ELA National Liaison Officers and worked to the satisfaction of all involved. In this vein, and with the assistance of the Belgian Social Security Office, the Social Insurance Service of Cyprus is identifying the affected seafarers; those about whose employment status it had sufficient data, the Cypriot Service has calculated the due social contributions and requested payment to the shipowner. The situation involving Madeira has been apparently solved by the Portuguese authorities making seafarers' social security in these situations voluntary. These cases unveil the problem for the authorities of learning about non-payments, the identities of affected seafarers and their employment situation. To this end, the significance of administrative cooperation in these matters is to be highlighted involving the authorities of the seafarers' country of residence and that of the flag State under the umbrella of ELA. While the same cooperation can be achieved without the involvement of EU/EEA/CH/UK authorities, a third-party intervention may facilitate it as this case illustrates.



In another case, and in order to provide sickness benefit, an S1 Form was sent to Italy which refused to comply with it despite being the responsible country as the flag State, i.e. Belgium was not responsible for providing health insurance despite being the country of residence. As stated by AO-Belgium-1

 **A lot of European countries... and now there is a problem that they do not accept all those European forms... and it is not only the seafarer the victim, but also the family.**

Asked as to whether the EESSI has improved matters, the answer was in the negative indicating that the problem has not been solved as to Italy, and also other countries were refusing to pay their part or reacting in a timely manner. The case of France was specifically mentioned due to the complexities of its system split into a number of administrative bodies. However, the coordination system works really well in applying the portability/exportability principles [AO-Belgium-1, 51:08].

Getting information is another problem raised during the interviews because of language barriers and the complexities of the system that is split between different administrations, i.e. benefits are administered by different entities that do not have a common approach either as to how to make information available to non-nationals. Against this backdrop, the significance of having a focal point and a user-friendly website in English was raised by the administration interviewees.

In terms of enforcement, the Belgian system does not require labour inspectors to get involved in MLC, 2006 inspections.



CROATIA



CROATIA

On board Croatian flagged ships		Seafarers residing in Croatia	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Croatian social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Croatian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Croatian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Croatia, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. According to Article 129 of the Code of Navigation, yes, but the seafarer pays the social security and not the employer as it applies for shorebased workers and seafarers engaged in national navigation.

Table 6: Croatia

Access to the Croatian social security regime is governed by Regulation 883/2004 and applicable international treaties with Australia, Bosnia and Herzegovina, Montenegro, Canada, Quebec, Macedonia, Serbia, and Turkey⁵⁸. Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with Bosnia and Herzegovina, Montenegro, Macedonia, Serbia, and Turkey (the latter with the exception of cases in which both seafarer and shipowner reside in the same country).
- The seafarer's residence is employed in the agreements with Australia and Canada.
- The registered location of the employer is the connecting factor used in the agreements with Quebec.

Beyond this international legal framework⁵⁹, the relevant provisions are article 129(2) of the Maritime Code, of 8 December 2004 (Text No. 3142)⁶⁰, and article 7(1)(3) of the Compulsory Health Insurance Act⁶¹, according to which all seafarers engaged in international navigation who are residing in Croatia, are deemed insured persons with a compulsory pension scheme, a compulsory medical insurance and an occupational safety and health insurance. The difference as regards to seafarers engaged in national navigation is that foreign shipowners are not required to pay contributions to the system due to the difficulties in ensuring these payments by the State. The CEACR has requested the country to pursue a system that may ensure these payments⁶².

According to MISSOC and as of January 2021, the Croatian social security regime is funded through social contributions although the government provides a minor part of the financing, mainly for social insurance benefits and payment of contributions for certain categories of insured persons⁶³. Pension insurance and health insurance have fixed rates while earmarked taxes are used to finance social protection. Old-age and other long-term benefits are managed as a pay-as-you-go-scheme (defined-benefit scheme, financed by contributions and State Budget) for the first pillar and a funded scheme (defined-contribution scheme, financed by contributions and rates of returns) for the second pillar.

According to what has been discussed above, seafarers engaged in international navigation and not covered by any international agreement are the only payers for their contributions to the compulsory pension and health system. The system is based on the Seaman's Book and employment is certified by the Harbour Master Office that submits application for insurance to the social security offices. Sole payment of contributions by seafarers engaged in international shipping was introduced in 2008 to address the lack of any type of social protection in the sector. The contributions and benefits are calculated taking into account the ranks and salaries in accordance with Croatian law regardless of the salaries earned abroad (AO-Croatia, 11:50). In the end, they pay less than shore-based workers and only for the time they work onboard. When they are at home, they are considered unemployed with the corresponding benefits. According to the ETF-Croatia-1 (23:29), this approach does not only benefit the seafarer, but also the shipowner who does not have to deal with a complex system. Nevertheless, the assumption is that the shipowner provides for a higher salary to pay for social contributions and actually, trade unions are working to include social security provisions in their CBAs. The Government also benefits because seafarers contribute to the system while before the reform, they were not contributing to the system in any way. In order to avoid compulsory insurance in Croatia, they have to submit proof to the Harbour Master Office that they are paying contributions to another State; otherwise, they will pay double contributions. The situation is different for seafarers on board EU/EEA/CH/UK flags.

59 Relevant legislation can be found on the site of the :< <https://migracije.hr/legislation/?lang=en>>

60 The provision reads as follows : "1) The monthly basis for the calculation of contributions referred to in Article 128, paragraph 1 of this Code is the salary that a member of the ship's crew would receive for the same or similar work on a ship in national navigation, determined by the Minister in a special regulation. (2) The amount of the maritime allowance of a member of the ship's crew in international navigation which is not included in the taxable part of the income shall be determined by the minister responsible for finance. (3) The employer is not obliged to pay taxes, surcharges and contributions and other payments on payments to a member of the ship's crew in international navigation."

61 The provision read as follows: (1) According to this Act, the following are compulsorily insured for compulsory health insurance: 3. persons with permanent or approved permanent residence in the Republic of Croatia employed in another Member State of the European Union, ie an international agreement, or a third country who do not have health insurance of the health insurance holder of a Member State or a third country, or who are not compulsorily insured according to the regulations of the country of work.

62 "The Committee requests the Government to provide further information on how it is ensured that all seafarers ordinarily resident in Croatia, and, to the extent provided for in the relevant legislation, their dependants are granted social security coverage in the branches specified, which is no less favourable than that enjoyed by shoreworkers resident in Croatia. It further requests the Government to provide detailed information on the benefits afforded to seafarers in each of the branches specified.

With regard to the difference between seafarers engaged in national and international navigation as to the payment of social security contributions, the Committee encourages the Government to explore mechanisms to ensure that the employer's social security contributions for seafarers engaged in international navigation are paid by the shipowner. Noting the information on bilateral agreements on social security with various countries, the Committee requests the Government to specify whether any of these agreements cover this matter and to provide further information on social security coverage of seafarers under these agreements."

63 Spadina, H. (2020). Migrants' Access to Social Protection in Croatia. In Lafleur, J-M, Vintila, D. (eds.). (2020). *Migration and Social Protection in Europe and Beyond (Volume 1). Comparing Access to Welfare Entitlements*. Heidelberg: Springer, 81-94, p. 84-85.

As to the branches provided, Croatia has ratified C102, C121 and the MLC, 2006.

	C102	MLC, 2006
medical care	X	X
sickness benefit	X	X
unemployment benefit	X	X
old-age benefit	X	X
employment injury benefit	X	X
family benefit		X
maternity benefit	X	X
invalidity benefit		X
survivors' benefit	X	X

Table 7: Croatia, adherence to international treaties

A summary of benefits is provided by the relevant websites:

- **Pension insurance:** old-age pension, rights on the basis of disability, physical impairment, survivors' pension
- **Health insurance:** health care, right to salary compensation in case of illness
- **Maternity benefits:** maternity benefits, parental benefits
- **Benefits during unemployment:** a right to cash benefits
- **Family benefits:** child allowance
- **Injuries – short-term benefits:** health care, right to salary compensation

The specificity of the Croatian social security system is that there is no single system for injuries at work and occupational diseases which would include short-term and long-term benefits on that basis, but short-term benefits (salary compensation and health care under more favourable conditions) are provided under health insurance subsystem, while long-term benefits are provided under pension insurance (disability pensions, survivors' pensions under more favourable conditions and physical impairment benefit). Seafarers complaint about payment of short-term benefits because they are covered by the shipowner during their time on board (medical care, sickness benefit and employment injury benefit). In fact, if sick on board, they will be paid only by the shipowner while the Croatian health insurance will exclude them from sickness benefit because a condition to get it is that the illness/injury starts at least 8 days before becoming unemployed. However, their unemployment begins only once repatriated and thus they are not meeting the condition for getting sickness benefit.

Old-age and invalidity benefits are made of two pillars. However, the second pillar has also been made compulsory for insured persons born since 1 January 1962. The Act on Insurance Periods Counted with Increased Duration establishes a definition of arduous and hazardous jobs in order to reduce the pension age that is significantly lower for seafarers in respect to other workers.

Unemployment benefits are available to residents in the country⁶⁴ and they are provided to seafarers during their time ashore. Citizens living abroad are not covered. However, voluntary insurance is possible for seafarers.

As to an effective administrative cooperation among member States, interviewees reported that seafarers usually choose to be affiliated with the Croatian system instead of that of the flag State by requesting the A1 document. Hence, Croatia makes use of Article 16 of Regulation 883/2004 on a regular basis in order to deviate by agreement with the relevant country from the otherwise applicable social security system, namely, that of the flag State or that of the country of the employer (AO-Croatia, 7:11). However, the latter needs to grant permission that it is systematically denied in some cases, especially if the employer is from the flag State, while other countries might not reply or reply late hampering seafarer's access to a social security system because in the meantime the seafarer is not covered in any country and then, if approved, payments have to be made in retroactive (AO-Croatia, 9:00. Confirmed by ETF-Croatia-1, 4:50).

The understanding is that the coordination system works well because seafarers are always covered in one or another member State. AO-Croatia, 15:00, reports some trouble with the UK because of oil platforms in the North Sea that are considered part of UK territory and it is mandatorily covered in this country. In contrast, the ETF-Croatia-2 emphasizes that the assumption is that the seafarer is insured in the country designated by Regulation 883/2004, but the question is that the authorities do not really check whether seafarers are covered by the system or not (6:16//33:15):



“In reality, if the seafarer is working on a European country, nobody actually checks if he really is insured in that other country. So, they just presumed he is. In most of the cases he is not insured. I am not saying about prospectives of seafarers, I won't get into their preferences. Maybe this works for them just great. I am saying that nobody checks if they are really insured in another country, so it is all on them, if they want to go back into the Croatian system then they will start this process of asking the other country to free them, to let them go from their system. Although probably they didn't have to pay contributions in that country (6:16).

ETF-Croatia-1 indicates (34:32) that seafarers are to be held also responsible for their rights and ensuring that they have joined a social security system by paying contributions. Education in these matters is critical and also for institutions to provide a better overview of their system in a manner and a language available to foreign seafarers engaged in their flag. The problem is further complicated in those cases in which the shipping company moves seafarers from ship to ship with different flags.

The Croatian system seems to be very complex to navigate even for nationals, with procedures to apply for social benefits that are complicated and required a high number of supporting documents⁶⁵. However, the system has been electronically updated in line with the EU guidelines, exchange of data is online and works relatively quick assuring that all seafarers are covered.

CYPRUS



CYPRUS

On board Cyprian flagged ships		Seafarers residing in Cyprus	
Seafarers residing in EU/EEA/CH/UK country regardless of nationality, admitted to Cyprian social security system per Article 11 of Regulation (EC) 883/2004, unless they work on board for less than 6 months and are insured in another State (Paragraph 6 of Part II of the First Schedule of the Social Security Law)	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Cyprian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Cyprian security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Cyprus, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. Cyprus does not have rules in this regard, i.e. they are excluded from Cyprian social security schemes. Nevertheless, the country has indicated that there are no cases of Cyprus-resident seafarers in this situation.

Table 8: Cyprus

The Cypriot social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Australia, Austria, Canada, Greece, Egypt, Quebec, the Netherlands, Serbia, Slovak Republic, Syria, Switzerland and the UK⁶⁶. Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with Austria, Greece, Egypt (with the exception of both seafarer and shipowner residing in the same country), Slovak Republic, Siria, Switzerland, the UK.
- The seafarer's residence is employed in the agreements with Australia (plus the flag principle as it is also required him/her working on board Cypriot-flagged vessels), Canada, and Quebec.
- The registered location of the employer is the connecting factor used in the agreements with the Netherlands and Serbia.

Regulation 883/2004 is further developed by Social Security Law 59(i)/2010, paragraph 2 of Part I of the First Schedule, indicating that those working on board Cypriot-flagged ship are subject to the Cyprus regime. However, according to Paragraph 6 of Part II of the First Schedule of the Social Security Law, seafarers covered by Regulation 883/2004, but who do not have the habitual residence in Cyprus and have worked for less than six months aboard a Cypriot-flagged ship and are insured in another State, are exempted from paying social insurance contributions in Cyprus⁶⁷.

Should the case not be covered by the international framework, the relevant legislation is the Maritime Labour Convention 2006, (Ratification) and for Matters Connected Therewith Law of 2012, whose article 151 applies the flag State principle⁶⁸.

Cyprus has ratified C102, although as a result of the ratification of **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)**, Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and pursuant to Article 45 of that Convention certain parts of C102 are no longer applicable. Cyprus has also ratified the MLC, 2006.

⁶⁷ The contents of this provision have been taken from the Direct Request sent by the CEACR: "Regulation 4.5 and Standard A4.5, paragraph 3. Social security. Protection for seafarers ordinarily resident in its territory. The Committee requested the Government to provide information on how it is ensured that social security protection is provided to seafarers regardless of the length of employment on board as well as to those who are ordinarily resident in Cyprus and working on ships flying the flag of another country outside of the European Union. The Committee notes the Government's indication that according to Article 151 of MLCL, a seaman working aboard a Cyprus ship is entitled on the basis of any state, semi-state or private insurance scheme, to social insurance protection which must at least cover medical care, sickness benefit or invalidity benefit, or employment injury benefit, as a result of an occupational accident. The Government further indicates that according to the Social Security Law 59(i)/2010 paragraph 2 of Part I of the First Schedule, employment of persons who fall within the scope of EU Regulation 883/2004, for the coordination of social security systems working aboard ships flying the Cyprus Flag, is considered as insurable employment. According to Paragraph 6 of Part II of the First Schedule of the Social Security Law, persons who fall under the above provision but who do not have the habitual residence in Cyprus and have worked for less than six months aboard a ship flying the flag of Cyprus and are insured in another State, are exempted from paying social insurance contributions in Cyprus. **The Committee notes the Government's explanation that all three of the conditions above have to apply simultaneously in order for a person to be exempted and that the above provision ensures that the persons working aboard ships flying the Cyprus flag are not left without social security insurance (even if they are insured in another country) regardless of their length of employment or habitual residence. The Committee also notes the Government's indication that in the event they are notified that a seafarer who falls under Paragraph 2 of Part I of the First Schedule of the Social Security Law 59(i)/2010, working on board a ship flying the flag of Cyprus is not insured under the Cyprus Social Security Scheme, the Social Security Services request that the employer provides sufficient evidence that the conditions of the exception are met, such as a certificate of his/her insurance. Failure to provide such evidence will render the employer/ship-owner subject to the sanctions stipulated in the Ratifying law as well as of the penalties stipulated in the Social Insurance law in respect of undeclared work and unpaid contributions.** The Committee finally notes the Government's indication that the Social Security Services and the Department of Merchant Shipping work in close cooperation on this issue, in order to ensure adherence to the provisions of the MLCL ».

⁶⁸ Article 151 reads as follows: "151. All seafarers employed on Cyprus ships are entitled, by virtue of any public, semi-public or private insurance scheme, to full social security protection, which shall include, at a minimum, medical care, sickness or disability benefit for employment due to an accident at work, and compensation for body injury".

	C102	MLC, 2006
medical care		x
sickness benefit	x	x
unemployment benefit	x	
old-age benefit	x	
employment injury benefit	x	x
family benefit		
maternity benefit		
invalidity benefit	x	x
survivors' benefit	x	

Table 9: Cyprus, adherence to international treaties

According to the MISSOC and as of January 2021, the Cypriot social security regime is administered by the Social Insurance Services (Υπηρεσίες Κοινωνικών Ασφαλίσεων), that is financed predominantly by social contributions, with the government providing a minor part of the financing, i.e. insured persons, employers and State. No earmarked taxes are used to finance social protection. A single overall set of social contributions rates is applied.

Old-age pensions and other long-term benefits are funded in two tiers. The basic pension is funded with a pay-as-you-go scheme, while a supplementary pension is partially funded (general level premium) by the Welfare Benefits Administration Service (Υπηρεσία Διαχείρισης Επιδομάτων Πρόνοιας) that provides Guaranteed Minimum Income (Ελάχιστο Εγγυημένο Εισόδημα) and Scheme supporting pensioners' households with low income (Σχέδιο ενίσχυσης νοικοκυριών συνταξιούχων με χαμηλά εισοδήματα). In the end, it is fully funded by the State.

Assimilated insurable earnings for periods of:

- unemployment
- incapacity
- maternity
- paternity
- invalidity
- military service
- education
- parental leave
- child raising of up to 156 weeks per child granted to women entitled to a pension after 31 December 1992, who failed to make contributions because they were raising children aged up to 12 years.

Moreover, there are prospective credits given from the date of invalidity or death till the age of 63 in order to increase the supplementary part of the pension.

Contribution rates are paid by employer and employee pro-rat, each 8.3% of insurable earnings. There is room for voluntary home contributors and those working abroad for Cypriot employers. The former is those who wish to continue their insurance after a prescribed period of compulsory insurance while the latter pay contributions based on their actual income or can choose to pay on the same basis as voluntary home contributors.

As to effective administrative cooperation, the abovementioned paragraph 6 of Part II of the First Schedule of the Social Security Law seems to be problematic to the extent that seafarers covered by Regulation 883/2004, but who do not have the habitual residence in Cyprus and have worked for less than six months aboard a Cypriot-flagged ship and are insured in another State, are exempted from paying social insurance contributions in Cyprus⁶⁹. Article 154 of the Maritime Labour Convention 2006, (Ratification) and for Matters Connected Therewith Law of 2012, complements article 151 that applies the flag State principle. Hence, it indicates that 'The Competent Authority shall exercise, as appropriate, its supervisory powers for the purpose of satisfying itself that the shipowners' responsibilities concerning social protection of seafarers employed on Cyprus ships that are insured under the social security system in the Republic, including the payment of the required social insurance contributions, are met'.

However, it is unclear what happens to those that are not insured in Cyprus, but in another EU/EEA/CH/UK member State or third country. Complaints raised by Belgian and UK trade unions pointed to a gap in the requested effective administration cooperation⁷⁰. As already indicated, the issue was raised by Belgian authorities and the ETF before the Administrative Commission and ELA in a case involving a number of seafarers residing in Belgium who work for two German employers and provide services on board Cypriot vessels. In accordance with Art. 7 of Regulation 2019/1149, ELA is tasked to facilitate the cooperation and exchange of information between member States having in mind the consistent, efficient and effective application and enforcement of relevant EU law. Accordingly, ELA acted as a mediating channel between Belgium and Cyprus to address the case with success: the Cypriot authorities requested the relevant payments to the German shipowners and their Belgian counterparts are cooperating with them to try to identify further concerned seafarers and their employment status.

DENMARK



DENMARK

On board Denmark flagged ships		Seafarers residing in Denmark	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Danish social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Danish social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Danish social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Denmark, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. There seems not to be any provision for seafarers residing in Denmark and working on board foreign flagged ships. The only specification is that, if the seafarer is resident in Denmark and is taken ill in Denmark after termination of service , (s)he is covered by the national health insurance. However, the system seems to be applicable to anyone residing in the country.

Table 10: Denmark

The Danish social security regime is applied in accordance with Regulation 883/2004 and international agreements with Australia, Bosnia-Herzegovina, Canada, Chile, Israel, Croatia⁷¹, Macedonia (FYROM), Morocco, Montenegro, New Zealand, Pakistan, Québec, Serbia, Turkey and the USA⁷². There seems to be a treaty with the Philippines as well, signed in 2012. Some of them specifically refer to seafarers and their social security coverage:

- The flag State principle is used in the agreements with the Chile, Israel, Morocco, Philippines, and the United States.
- The seafarer's residence is employed in the agreements with Australia, Canada, and Quebec.

There are not specific rules for cases of seafarers residing in the country, working onboard foreign-flagged vessels and who have not been employed by an EU/EEA/CH/UK-based employer or RPS apart from the international legal framework⁷³. However, the Danish social security administration (*International social sikring*) addresses this situation on a case-by-case basis and following the Court of Justice's case law, i.e. the residence factor prevails and these seafarers are covered by the Danish system.⁷⁴ In general, seafarers working onboard Danish-flagged ships are covered by the system regardless of their residence⁷⁵.

According to MISSOC and as of January 2021, the Danish social security regime as a whole is mainly financed by general taxation. Accordingly, neither employer nor employees are requested to pay social security contributions, but pay taxes with seafarers covered by the system having to pay a special tax rate. There are no earmarked taxes, but there are contributions for supplementary schemes, and in the case of accidents at work and unemployment. The provision of benefits involves local authorities for healthcare, social assistance, long-term care, sickness benefits and disability benefits, including municipalities being responsible for co-financing some services (e.g. healthcare, care for the elderly, rehabilitation outside of hospitals, etc.) and of cash benefits (e.g. unemployment benefit, sickness benefit, etc.). The latter can levy their own taxes, but not the regions which are primarily responsible for the healthcare system.

Denmark has ratified C102 and the MLC, 2006.

	C102	MLC, 2006
medical care	x	x
sickness benefit		x
unemployment benefit	x	
old-age benefit	x	
employment injury benefit	x	x
family benefit		
maternity benefit		x
invalidity benefit	x	
survivors' benefit		

Table 11: Denmark, adherence to international treaties

⁷¹ It could not be found though on the Croatia website.

⁷² The list was found in the following website: <https://ias.au.dk/goingabroad/socialsecurity>

⁷³ According to the CEACR, "Regulation 4.5 and the Code. Social security. In its previous comment, the Committee requested the Government to provide information on whether seafarers ordinarily resident in Denmark working on ships operating under the flag of another country are provided with social security protection as required under Regulation 4.5 and the Code. In its reply, the Government indicates that seafarers working on ships operating under the flag of another country who ordinarily reside in Denmark will, when the person is in Denmark be provided with social security protection equivalent to any other citizen residing in Denmark and working on land. The Committee wishes to draw the Government's attention to the requirements of Regulation 4.5 of the Convention that social protection shall be provided to seafarers who are ordinarily resident in Denmark not only when they are in Denmark, but also when they are on board ship or abroad. **The Committee takes note of this information which replies to its previous request.**"

⁷⁴ The AO-D interview provided the case of a seafarer residing in Denmark, employed by an Indonesian company and working on board a Panamanian flagged vessel.

⁷⁵ See Danish Maritime Authority



The country has a pay-as-you-go system for old-age pension (*folkepension*) and disability pension (*førtidspension*). A funded system is applied for supplementary pensions. Seafarers working on board Danish-flagged ships are entitled to join ATP Livslang Pension (labour-market supplementary pension), being social security contributions paid by the employer. Voluntary contributions to the system are also accepted.

In the event of a permanent injury due to an accident at work, compensation is financed through premiums in a funded private insurance system. To cash these benefits, seafarers are assisted by a Danish trade union thanks to an agreement concluded with the Danish Shipping Association. In accordance with this agreement, companies report those seafarers in need of their assistance to the trade union that handles the administrative matters for them if the seafarer agrees to sign a power of attorney with them. In the event of occupational diseases, compensation is provided through contributions in a pay-as-you-go system.

Denmark has issued different executive orders dealing with some benefits for seafarers:

- Act on seafarers' employment conditions, etc., Statutory Order no. 1662 of 17 December 2018.
- Executive Order no. 825 of 20 September 1994 on pregnant seafarers' right to resign and return home freely.
- Executive Order no. 1331 of 5 December 2006 on the special health insurance scheme for seafarers and others.
- Executive Order no. 728 of 29 June 2012 on sickness benefits for seafarers.
- Executive Order no. 1110 of 26 November 2012 on maternity benefits for seafarers.
- Executive Order no. 229 of 7 March 2013 on seafarers' right to free travel with maintenance.
- Executive Order no. 286 of 14 March 2013 on seafarers' right to care.

Details of these benefits can be found at the [Danish Maritime Authority website](#). Due to the peculiarities of the Danish system based on taxes, old-age and invalidity benefits do not appear herein listed. However, seafarers working on board Danish-flagged vessels are entitled to ATP Livslang Pension while others might get access on a voluntary basis. Although statistics could not be provided for, the AO-Denmark interviewee confirmed that seafarers not residing in Denmark, but working on board Danish-flagged vessels are entitled to claim pensions in Denmark and their time on board is counted as if they were residents in the country. As to other benefits and while working on board Danish-flagged vessels, seafarers residing abroad are furnished with a Yellow Health Card in order to get health care in their countries paid by the Danish Government.

Effective administrative cooperation. The AO-Denmark interviewee confirmed that the country follows Regulation 883/2004 applying first the flag State principle and second the exceptions as to the residence country either of the employer or of the employee. Problems have arisen with a Danish seafarer residing in Denmark employed by a Singaporean shipowner for many years on board a Cypriot-flagged vessel. When time arrived to collect sickness benefits, it turned out the Singaporean-based shipowner had never paid Cypriot social security contributions. The authorities of this country confirmed that they did not get the payments, but did not take any steps to solve the fraud/mistake until the Danish authorities took the step to approach the European Commission and requested assistance from SOLVIT. Nevertheless, it is unclear how the situation ended up.

As to the application of Article 16 of Regulation 883/2004, the overwhelming majority of applications come from Croatian authorities according to the AO-Denmark interviewee. And since the said provision requires agreement, the Danish authorities always contact the employer who always reject that possibility. There was only one case in which a shipowner agreed to this arrangement. Asked as to whether they have resorted to Article 16 of EU Regulation, e.g. to solve the practical problems with Cyprus, it was indicated that the Danish authorities could consider it but they have not been requested to do so either by seafarers or employers.

The AO-Denmark interviewee also reported that the Danish legislation has been changed to consider oil rigs working on the Continental Shelf as subject to that jurisdiction and not to that of the flag they are flagging. This is an important change on the applicable law to social security of people working on board.

Finally, the ETF-Denmark-1 made the point of language barriers in understanding the social security system. All communications between Danish authorities and foreign seafarers are in Danish.



FRANCE

On board French flagged ships		Seafarers residing in France	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to French social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the French social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the French social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in France, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. In accordance with Article L.5551-1 of the Transport Code, seafarers have to be affiliated to the French social security system unless the ship owner proposes social welfare benefits (public or private) of at least an equivalent level to those provided by French social security (Article L.111-1 of the Social Security Code).

Table 12: France

The French social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Algeria, Andorra, Benin, Bosnia and Herzegovina, Cameroon, Canada, Cape Verde, Chile, Congo (Republic of), Croatia, Czech Republic, Gabon, Guernsey, India, Israel, Ivory Coast, Japan, Jersey, Macedonia, Madagascar, Mali, Mauritania, Monaco, Montenegro, Morocco, Niger, Norway, Philippines, Poland, Romania, Saint Pierre and Miquelon, San Marino, Senegal, Serbia, Slovakia, South Korea (ROK), Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, United States of America⁷⁶. Some of them specifically refer to seafarers and their social security coverage by favouring the flag State principle⁷⁷. However, some agreements have introduced an exception to this rule, i.e. they provide that seafarers of French nationality employed on a vessel flying the flag of the other contracting State may continue to benefit from the French seafarer's regime provided that the foreign shipowner contributes for these seafarers to the French body on seafarers' social security, the *Etablissement National des Invalides de la Marine* (ENIM)⁷⁸. In the agreements with Benin, Mauritania and Togo, similar provisions exist for nationals of the other contracting State on board a ship flying the French flag. In the other agreements, i.e. Algeria, Cote d'Ivoire and Gabon, the provisions are unilateral and apply only to French seafarers on board ships flying the flag of the other contracting State.

Article L.5551-1 of the Transport Code, as amended by laws of 9 March and 30 December 2017, addresses seafarers' access to the French social security, including those cases not covered by the abovementioned international framework. More specifically, the provision refers to old age benefit as administered by ENIM and has been drafted to cover seafarers⁷⁹:

- with navigational skills,
- regularly residing in France,
- working on board a foreign-flagged ship • that are not covered by a foreign regime in accordance with either Regulation 883/2004 or an international agreement concluded by France,
- and not covered by para. 34 of Article L. 311.5 of the Social Security Code by which seafarers engaged in domestic navigation are subject to the general regime⁸⁰.

Further exceptions from the special social security regime for seafarers apply to those whose services are mainly provided on land and as determined by the maritime administration, taking into account their position as employees or self-employed workers, and to those embarked on ships whose operation does not require specific qualifications. Nevertheless, the latter does not include ships that carry more than 12 passengers, operate regular lines, engage in specific port services, and involve in construction, supply or maintenance activities for offshore installations.

⁷⁶ The Centre of European and International Liaisons for Social Security (CLEISS) has been set up to facilitate the manage of these international framework. The list of treaties is to be found in the [Cleiss website](#).

⁷⁷ See the information provided in the [Cleiss website](#).

⁷⁸ See the dedicated [ENIM website](#)

⁷⁹ The full reading of the provision, available at Légifrance, is as follows: "I.-Sous réserve du II, sont affiliés au régime d'assurance vieillesse des marins, lorsqu'ils exercent une activité directement liée à l'exploitation du navire, au sens de l'article L. 5511-1 :

1° Les gens de mer embarqués sur un navire battant pavillon français et exerçant leur activité dans les secteurs du commerce, de la pêche et des cultures marines et de la plaisance professionnelle;

2° Dans le respect de la convention du travail maritime, adoptée à Genève le 7 février 2006, les gens de mer résidant en France de manière stable et régulière et embarqués sur un navire battant pavillon d'un Etat étranger autre qu'un navire mentionné à l'article L. 5561-1 du présent code, s'ils remplissent les conditions suivantes:

a) Ne pas relever du 34° de l'article L. 311-3 du code de la sécurité sociale;

b) Ne pas être soumis à la législation de sécurité sociale d'un Etat étranger en application des règlements de l'Union européenne ou d'accords internationaux de sécurité sociale conclus avec la France;

c) Ne pas être couverts par une protection sociale au moins équivalente à celle prévue à l'article L. 111-1 du code de la sécurité sociale.

II.-Par dérogation au I et sous réserve du III, ne sont pas affiliés au régime d'assurance vieillesse des marins les gens de mer:

1° Embarqués à titre accessoire au titre d'une activité à terre qui représente la part principale de leur activité, déterminée par arrêté du ministre chargé de la mer en fonction de leur statut de salarié ou de travailleur indépendant;

2° Embarqués à bord d'un navire pour l'exploitation duquel n'est exigé qu'un titre de formation professionnelle maritime régissant les voyages à proximité du littoral. La liste des titres de formation exigés pour les embarquements mentionnés aux 1° et 2° est établie par arrêté du ministre chargé de la mer.

III.-Sont affiliés au régime d'assurance vieillesse des marins les gens de mer embarqués à bord de navires mentionnés au 2° du II effectuant :

a) Le transport de plus de douze passagers au sens de l'article L. 5421-1;

b) L'exploitation de lignes régulières;

c) Les services portuaires au sens du titre IV du livre III de la cinquième partie du code des transports, le balisage, le dragage ou l'hydrographie;

d) Les activités de construction, ravitaillement ou d'entretien des installations en mer. Les conditions d'application du présent article sont précisées par décret en Conseil d'Etat.

⁸⁰ This provision refers to Article L. 5561-1 of the Transport Code that reads as follows: "Le présent titre est applicable aux navires : 1° Ayant accès au cabotage maritime national et assurant un service de cabotage continental et de croisière d'une jauge brute de moins de 650; 2° Ayant accès au cabotage maritime national et assurant un service de cabotage avec les îles, à l'exception des navires de transport de marchandises d'une jauge brute supérieure à 650 lorsque le voyage concerné suit ou précède un voyage à destination d'un autre Etat ou à partir d'un autre Etat ; 3° Utilisés pour fournir une prestation de service réalisée à titre principal dans les eaux territoriales ou intérieures françaises. Le présent titre n'est pas applicable aux navires de construction traditionnelle participant à des manifestations nautiques."

The new provisions of the Transport Code have a transition period. Seafarers who had been sailing prior to 31 March 1999 on board foreign-flagged vessels can, at their request, when they are sailing on a vessel registered in the French international registry (RIF), keep the benefit of the social insurances they had contracted prior to that date. The CEACR has requested France to provide more information on the branches provided to seafarers as covered by section 26 of Act 2017-1836 of 30 December 2017⁸¹.

According to MISSOC and as of January 2021, the French system is financed by social contributions and taxes. The budget is established within the framework of the *Loi de financement de la sécurité sociale* (LFSS). Around fifty taxes are earmarked for financing the social protection, including the general social contribution (CSG) and the contribution for the repayment of the social debt (*contribution au remboursement de la dette sociale*, CRDS). The French departments are financing the income support (*revenu de solidarité active*, RSA).

France has ratified C102 and the MLC, 2006.

	C102	MLC, 2006
medical care	X	X
sickness benefit		X
unemployment benefit	X	X
old-age benefit	X	X
employment injury benefit	X	X
family benefit	X	X
maternity benefit	X	X
invalidity benefit	X	X
survivors' benefit		X

Table 13: France, adherence to international treaties

Five types of risks are distinguished and form the five branches of social security:

- the sickness branch (sickness, maternity, invalidity, death);
- the family branch (including disability and housing);
- the accidents at work and occupational disease branch;
- the retirement branch (old age and widowhood – scheme based on the pay-as-you-go principle);
- the collection branch (contributions and recovery).

⁸¹ Regulation 4.5 and the Code. Social security. The Committee previously noted the Government's indication that a project was under examination for the registration with the general scheme of French and foreign seafarers resident in France who serve on board ships flying the flag of a third country that has no social security agreement with France and who are not covered by private insurance. The Committee notes with **interest** that the Government reports the adoption, pursuant to section 31 of Act No. 2015-1702 of 21 December 2015 and implementing Decree No. 2017-307 of 9 March 2017, of the principle of compulsory registration of seafarers residing in France, when they work on a ship flying a foreign flag, with French social security schemes, through the National Maritime Invalidation Institute (ENIM) in the case of mariners and with the general scheme in the case of non-mariners. The Committee notes that section 26 of Act No. 2017-1836 of 30 December 2017 specifies the eligibility requirements for these seafarers. **The Committee requests the Government to indicate which branches of social security are covered for the persons so registered.**



Payment of contributions are made by both, employers and employees. In the case of employers not seated in a member State, but employing seafarers residing in France, a special system to pay contributions has been set up. The ENIM Report of Activities 2019 reports that it has facilitated the regularization of 200 shipowners seated in the overseas territories⁸². Essential condition is that the seafarer resides in the country or has there his/her principal residence defined as an actual period of stay within metropolitan France or an overseas department of at least 6 months. This also includes seafarers that reside in a third country, but work on the territorial or internal waters for a period of 6 months within a 12-month period. The obligation to join ENIM or get an insurance policy becomes mandatory 183 days after commencing working in French territorial waters. Seafarers join ENIM by making a sworn statement of this fact. Shipowners have also the option to join ENIM when in compliance with Article L5551-1 once the stay is 183 days or more.

Administrative cooperation among member States seems to work in an effective manner. Although involving fishers and not seafarers, it is to highlight the Opinion of the Conciliation Board of November 2017, on the issue of applicable legislation to employees working on board a vessel at sea submitted upon request of the French and Spanish delegations (case CB – 1/17) to the extent that refers to the application of Regulation 883/2004⁸³. This opinion was requested in 2015 by the Spanish *Instituto Social de la Marina* (ISM) and ENIM, after fishers residing in Spain and employed by Spanish-based shipowners, but working on board French-flagged ship, complained about the requirement to contribute to the French social security to be allowed to work. The Opinion concluded that the applicable system is the Spanish one, and both national institutions have negotiated that all those affected join the Spanish system from 1 April 2017 instead of the French one. As to contributions paid in France between 1 April 2017 and 30 June 2019, they will be erased from ENIM database and transferred to ISM, in a measure that affects an estimation of more than 400 workers. ENIM will pay those contributions earned between January 2018 and June 2019 that amount to around €630,000, although some deductions on account of payments would be necessary amounting to €41,000 in cash and €1,000 in service.

ITALY



ITALY

On board Italian flagged ships		Seafarers residing in Italy	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Italian social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Italian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Italian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Italy, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. The flag State rule applies in principle although the seafarer may have access to complementary social security in Italy upon request or by shipowner's payment. See Article 4 of Law 26 July 1984, No. 413.

Table 14: Italy

The Italian social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Argentina, Australia, Brasil, Canada, Cape Verde, Quebec, Israel, Jersey and Cannal Islands, Monaco, Bosnia-Herzegovina, Macedonia (FYROM), Serbia, Montenegro, Kosovo, Mexico (only old-age benefits already acquired), Korea (posting of workers), San Marino, Tunisia, Turkey, United States, Uruguay, Vatican City, Venezuela⁸⁴. Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with Argentina, Brasil, Canada (although there is a special rule for work on the continental platform), Cape Verde, Quebec (with a concession to the residence principle in case both seafarer and employer are residing in the same country), Israel (employer's residence is also taken into account, especially if ship flagged in a third State), Jersey and Cannal Islands (but seafarer's residence is also required and there is an exception for cases where both seafarer's and shipowner's residence is common), Bosnia-Herzegovina, Macedonia (FYROM), Serbia, Montenegro, Kosovo, Monaco, Tunisia, Turkey (exception for cases where both seafarer's and shipowner's residence is common), Uruguay, and Venezuela.
- The seafarer's residence is employed in the agreements with Korea if (s)he is considered a temporarily posted worker.
- The registered location of the employer is the connecting factor used in the agreements with San Marino, Vatican City, United States, and with Bosnia-Herzegovina, Macedonia (FYROM), Serbia, Montenegro, Kosovo, Turkey for transportation of passengers and goods.

The relevant national legislation is to be found in Law No. 413, of 26 July 1984 whereby the **Fondo di Previdenza Marinara** is established. The **latter** focuses on old-age benefit, invalidity benefit and survivors' benefit. In principle, all seafarers residing in Italy, including those working on board foreign-flagged ships, are included provided that they pay contributions to the Italian system. Voluntary contributions by the seafarers are accepted. The Government has informed CEACR that seafarers residing in Italy are covered by foreign-flagged States, but can have access to additional security in the country by this voluntary system. CEACR has requested to ensure that foreign-based shipowners pay contributions to the Italian system⁸⁵.

According to MISSOC and as of January 2021, the Italian social security system differentiates between an insurance-based system funded through contributions according to a pay-as-you-go system, and a social assistance system funded mainly through general taxation. No earmarked taxes are used to finance social protection. Contributions are set for each branch separately. Both State and regional authorities are in charge of financing healthcare. Old-age, invalidity and survivors' benefits are based on a pay-as-you-go system.

Italy has ratified C102 and the MLC, 2006.

	C102	MLC, 2006
medical care		
sickness benefit		X
unemployment benefit		X
old-age benefit	X	X
employment injury benefit		X
family benefit	X	X
maternity benefit	X	X
invalidity benefit		X
survivors' benefit		X

Table 15: Italy, adherence to international treaties

Law 122/2010 transferred the competences of IPSEMA (Istituto di previdenza sociale per il settore marittimo) to INAIL (*Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*). In accordance with Law 99/2013 affecting Decree-law 76/2013, in force since 1 January 2014, INPS (*Istituto nazionale di previdenza sociale*) is in charge of sickness and maternity benefits. According to Law No. 413, of 26 July 1984 and the *Fondo di Previdenza Sociale*, seafarers with short-term contracts are benefitted by an increase of 40% of their time worked on board.

A major challenge encountered in the country is to ensure that foreign-based shipowners contribute to the Italian system. To this end, Articles 4 and 5 of **Law No. 135 of 4 April 1977** require Italian-based RPSs to ensure that social security contributions are paid. For the case of shipowner's default, these services are obliged to take specific insurance.

No information on an effective administrative cooperation among EU/EEA/CH/UK could be gathered apart from comments made by other administrations as to Italian social security administration being slow in answering their requests for cooperation.

⁸⁴ The list is available at the [Istituto Nazionale di Previdenza Sociale \(INPS\) site](#).

⁸⁵ (...) It further notes the Government's information that Act No. 413/1984 regulates not only statutory benefits for seafarers working on ships flying the Italian flag, but also optional benefits for seafarers who are ordinarily resident in Italy and work on board ships flying foreign flags. Those seafarers may request the affiliation to the general statutory insurance system managed by the National Institute for Social Security (INPS), as well as the optional system insurance cover for disability, old age and survivors (IVS), and for Tuberculosis (Tbc). The request of pre-registration may be presented by the seafarer or by the shipowner. In the first case, only the seafarer has the obligation to pay the contribution, while in the second case the obligation is on the shipowner. Moreover, seafarers who are ordinarily resident in Italy and work on board ships flying a foreign flag are subject to social security legislation of the flag State. Therefore, the social security coverage under the Italian legislation would be additional to that provided by the flag State. **Noting this information, the Committee encourages the Government to explore mechanisms to ensure that the employer's social security contributions for seafarers who are resident in Italy and work on board ships flying a foreign flag are always paid by the shipowner and to provide information on any developments in this regard.**



MALTA



MALTA

On board Maltese flagged ships		Seafarers residing in Malta	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Maltese social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Maltese social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Maltese social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA country. 2. If mobile and a substantial part of the work is not provided in Malta, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i> 3. If shipowner in a third country, national rules apply. Foreign seafarers ordinarily resident in Malta are excluded from Maltese social security unless the shipowner has a place of business in this country.

Table 16: Malta

The Maltese social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Australia, Canada, Libya, the United Kingdom (applicable only to the Isle of Mann and Guernsey), and New Zealand (only for old-age benefits and other long-term benefits).⁸⁶ Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreement with UK (with the application of seafarer's residence if the employer is based also in the same country, and for cases of temporarily posted seafarers), but it has been superseded by Regulation 883/2004 and now the Protocol to the EU/UK **Trade and Cooperation Agreement**, on Social Security Coordination.
- The seafarer's residence is employed in the agreement with Australia and Canada.

If the situation is not covered by Regulation 883/2004 and the international agreements, the relevant national law is Chapter 318 of the Social Security Act, of 1 January 1987. According to the First Schedule [Article 5], insurable employment is mainly determined in accordance with the employee's residence and employer's place of business being in Malta. More specifically, the Maltese system covers:



- "2. Employment as aforesaid outside Malta:**
- (a) as master or a member of the crew of any ship or vessel registered in Malta;**
- (b) as pilot, commander, navigator or a member of the crew of any aircraft licensed in Malta;**
- (c) on board any ship or vessel, otherwise than as master or a member of the crew:**
- Provided that -**
- (i) this employment is for the purposes of the ship or vessel or her crew or of any passengers or cargo or mails carried thereon;**
- (ii) where the employee concerned is not a citizen of Malta, the contract is entered into in Malta, and, in all cases, irrespective of the employee's nationality, with a view of its performance (in whole or in part) while the ship or vessel is on her voyage; and**
- (iii) the employer has a place of business in Malta**

This sets aside those foreign citizens residing outside the EU/EEA/CH/UK whose shipowner does not have a place of business in Malta. Moreover, section 168A(2) of the Merchant Shipping Act lays down that the provisions of the Social Security Act or any enactment replacing that Act shall not apply in respect of foreign seafarers employed on Maltese ships. In the case of seafarers residing in Malta working on board vessels flagged in third countries for employers not seated in the EU/EEA/CH/UK, Article 13 of the Social Security Act applies.⁸⁷ The latter establishes that seafarers' entitlement to get access to the system by paying voluntary contributions. In these situations, shipowners will not be requested to pay contributions. Although CEACR has requested the country to clarify how they are covered⁸⁸, the issue is to ensure a system by which foreign shipowners pay contributions as if they were seated in the country.

According to MISSOC and as of January 2021,⁸⁹ the Maltese social security system is funded by contributions paid by employer, employees and self-employed, with differences between expenditure and receipts from contributions covered by the government from general taxation revenue. Unemployment, disability and caring are non-contributory benefits and financed by general taxation. There are no earmarked taxes. Old-age benefit as well as other long-term benefits are managed as pay-as-you-go schemes.

⁸⁶ The list is available at the [Maltese Social Security site](#).

⁸⁷ Art. 13 of the Maltese Social Security Act reads as follows:

« 13. (1) A person who -

(a) is employed under a contract of service outside Malta in such manner that he is not in insurable employment,

and

(b) retains his ordinary residence in Malta, may, at his request and with effect from such date, not being later than the date of such request, as the Director may determine, instead of paying a Class Two contribution, pay a Class One contribution; and, for this purpose, no contribution shall be payable by or on behalf of or in respect of his employer.

(2) The contribution payable under sub-article (1) of the article shall be paid in the same form and manner and at the same intervals as for contributions payable by self-employed persons in accordance with article 11; and such contributions shall remain payable in respect of any period during which the conditions specified in sub-article (1)(a) and (b), continue to apply. »

⁸⁸ « *Recalling that under Standard A4.5, paragraph 3, each Member shall take steps to provide the complementary social security protection referred to in paragraph 1 of the Standard to all seafarers ordinarily resident in its territory, the Committee requests the Government to clarify the manner in which social security protection is extended to all seafarers ordinarily resident in Malta, regardless of their nationality and regardless of the flag of the ships they work on.* »

⁸⁹ See also S. Vella (2020). *Migrants' Access to Social Protection in Malta*. In J.-M. Lafleur, D. Vintila (eds.), *Migration and Social Protection in Europe and Beyond* (Volume 1), IMISCOE Research Series



As to specific problems, the case of local fisheries is brought up by the ETF-Malta-1 and 2 (20:18) as a significant problem because of foreign fishers working on board Maltese-flagged fishing vessels for Maltese employers on Maltese territorial waters. They do not need a residence permit or work permit. Distant fishing is not addressed by the national legislation, i.e. there is a gap in the laws and regulations in the country that also affects social security. The legislation is meant to change in accordance with Directive 2017/159/EU of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche)⁹⁰. However, the enforcement gap might nevertheless remain in accordance with the trade unions.

Malta has not ratified C102, but it has ratified the MLC, 2006. In accordance with ETF-A-1, compliance with the branches indicated by the country is done resorting to shipowner's liability.

	C102 (non ratified)	MLC, 2006
medical care		x
sickness benefit		x
unemployment benefit		x
old-age benefit		
employment injury benefit		
family benefit		
maternity benefit		
invalidity benefit		
survivors' benefit		

Table 17: Malta, adherence to international treaties

Malta provides for:

- Family Benefits
- Maternity Benefits
- Healthcare Long-term care
- Sickness Benefits
- Invalidity Pension
- Benefit Claim for Injury at Work and Disease/Medical Condition related to Work
- Pension for Widows/Widowers and Survivors
- Contributory Pension for Retirement
- Social assistance
- Unemployment Benefit

The EU/EEA/CH/UK framework provides for an effective administrative cooperation according to the Maltese authorities. (32:10-AO-Malta-2) Article 16 thereof is regularly applied, in particular as requested by Croatian seafarers. Article 65(2) of Regulation 883/2004 is not properly applied, nevertheless. The proposal for amendment of Regulation 883/2004 indicates that seafarers working for a continuous period of three months in one country, will have to claim unemployment benefits from that country. However, if a German seafarer is working on board a Maltese flagged ship, (s)he will get Maltese unemployment benefit that is very low compared to the German one. And the interaction with sickness benefit is not taken into consideration either.



AO-Malta-1 and 2 (20:00) highlight that the Maltese system addresses lack of enforcement on a seafarer's complaint basis and in a coordinated manner. That also applies for international cases when the seafarer claims for benefits and then the Maltese authorities realise that payments have not been made for seafarers (23:10). Registration of seafarers requires the SEA plus the ship register (the latter has not been included yet in the register). However, shipowners are not required to share details of seafarers at the time of the registration which would be a way to tackle mistake or fraud (AO-Malta-2, 28:46).

The website dedicated to social security is the same for shore-based workers and seafarers.



THE NETHERLANDS



NETHERLANDS

On board Dutch flagged ships		Seafarers residing in the Netherlands	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Dutch social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Dutch social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Dutch social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Malta, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply and the seafarer is excluded from the Dutch social security system.

Table 18: The Netherlands

The Dutch social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Austria, Portugal, Spain, Sweden, Switzerland, New Zealand, Philippines (only on the exports of benefits), Tunisia, Turkey (only on the export of benefits), United States.⁹¹ The only agreement whose contents could be consulted and referred to seafarers is that with Tunisia resorting to the seafarer's residence as the connecting factor.

According to a **report** sent to the European Council in 2018 on the application of the European Social Security Code, seafarers residing in the Netherlands are entitled to medical care, old-age benefit, child benefit, and survivors' benefit. Those residing and working for an employer residing in the Netherlands, as well seafarers employed by a foreign employer working on a Netherlands-flagged ships, are also covered by sickness benefit, unemployment benefit, maternity benefit, and invalidity benefit.⁹² The case of seafarers residing in the Netherlands, employed by a shipowner in a third-country and working on board a ship flagged in a third country would not be contemplated. Although in reality, practically all Netherlands-based seafarers worked on board Dutch flags or for Netherlands-based employers because of the State aid system in the country that favours shipowners, i.e. tax payments are reduced if they employ a Netherlands-based seafarer.

According to MISSOC and as of January 2020, the system is financed by social contributions while the State only covers deficits when they arise. There are two **systems** in the Netherlands. The national insurance schemes (*Volksverzekeringen*) covering medical care, old-age benefit, child benefit, and survivors' benefit are funded by social contributions from all residents and non-residents liable to Dutch income tax. The employee insurance schemes (*werknemersverzekeringen*) that cover unemployment, invalidity and sickness cash benefits, including those for maternity, are funded by employers, or benefit agencies in the case of benefit recipients. Guaranteed minimum income resources (*Participatiewet*) as well as benefits provided under the General Child Benefit Act (*Algemene Kinderbijslagwet*) and Act on Child-related Allowance (*Wet op het kindgebonden budget*) are financed by general taxation. The statutory old-age pension (the first-pillar) and other long-term benefits are funded on a pay-as-you-go basis. In addition to statutory pension, seafarers are in a mandatory merchant navy pension fund that applies to Netherlands-flagged vessels. Dutch employers resorting to foreign-flagged vessels provide for an insurance-based pension in accordance with the CBA.

⁹¹ No list found. Information gathered from ILO site and others.

⁹² In similar terms, the CEACR states the following in its direct request to the country: "Regulation 4.5 and Standard A4.5, paragraph 3. Social security. Protection for seafarers ordinarily resident in its territory. The Committee requested the Government to provide information on whether seafarers ordinarily resident in the Netherlands working on ships flying the flag of another country are provided with social security protection, as required under Regulation 4.5 and the Code, both in the presence and absence of bilateral or multilateral agreements. The Committee notes the Government's indication that if seafarers are working on board a ship flying the flag of another country and fall under Dutch social security law, they will have the same social security rights as any other citizen falling under Dutch social security. The Government further explains that, in the absence of a bilateral or multilateral agreement, a seafarer ordinarily resident in the Netherlands is in principle insured by the national insurance schemes (*volksverzekeringen*), covering all residents of the Netherlands. Seafarers ordinarily resident in the Netherlands are also insured by the Dutch employee insurance schemes (*werknemersverzekeringen*), covering employees, if they work for an employer situated in the Netherlands. This means that they are insured under the Unemployment Benefit Act (WW), incapacity to work schemes (Sickness Act (ZW), Act for Work and Income (WIA)) and maternity scheme (Labour and Care Act (Wazo)). Finally, seafarers who are not insured under the Health Insurance Act/Long-term Care Act, or the Sickness Act or under corresponding EU Member State legislation are covered by the provisions of articles 7:734d-734k CC. **The Committee notes this information.**"



The Netherlands has ratified C102, C121, C128, C130, and the MLC, 2006.

	C102	MLC, 2006
medical care	X	X
sickness benefit	X	X
unemployment benefit	X	X
old-age benefit	X	X
employment injury benefit	X	
family benefit	X	X
maternity benefit	X	X
invalidity benefit	X	X
survivors' benefit	X	X

Table 19: The Netherlands, adherence to international treaties

The Dutch social security system provides the following:

- sickness and maternity;
- occupational disability insurance, including both accidents at work and occupational diseases;
- old-age pensions;
- survivors' benefits;
- unemployment;
- child benefits.

Uitvoering Werknemersverzekeringen (UWV) is in charge of sickness, occupational disability insurance, and unemployment. The *Sociale Verzekeringsbank (SVB)* looks after old age pensions, survivor's benefits and child benefits and is the competent institution for applying title II of Regulation 883/2004.

The EU/EEA/CH/UK framework ensures effective administrative cooperation. However, there are compliance and enforcement issues such as for example as regards to unemployment benefits in complex cases involving a seafarer residing in a member State but working on board a ship flagged in another. These cases are covered by Article 65 of the Regulation 883/2004, but there are nevertheless application issues.

The *SF* judgment is criticized because it deviates from the rule of allocating social security matters to the member State where the employer is seated in those cases in which the seafarer residing in another member State works on board a ship flagged in a third country. The situation after the *SF* ruling is one in which the administration does not know whether seafarers residing in the Netherlands are in this situation unless the tax authorities learn about this particular employment situation (AO-Netherlands, 23:40). Moreover, it raises a number of issues because of the lack of coverage of these seafarers by national legislation, i.e. the latter is based on the flag State principle. One of the issues is how to learn about these seafarers that work for another EU-based jurisdiction, while another is the discussion as to how to include them on a system focused on seafarers working on board Netherlands-flagged vessels. The problem was addressed by the Netherlands resorting to Article 16 of the Regulation 883/2004 leading to an extra administrative work. As to mistake and error, they are uncovered in case that there is an application by the individual; otherwise, resources for inspections are very limited.

Another issue raised is an increase of third country nationals working within the EU, also on board fishing vessels (AO-Netherlands, 56:00).



NORWAY



NORWAY

On board Norwegian flagged ships		Seafarers residing in Norway	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Norwegian social security system per Article 11 of Regulation (EC) 883/2004. However, hotel and restaurant staff on cruise ships registered in the Norwegian International Ship's Register are excluded .	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Norwegian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Norwegian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Norway, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. In general, anyone who resides in Norway is compulsorily insured under the National Insurance Scheme. However, if the person is employed abroad, only voluntary access to the system is provided.

Table 20: Norway



The Norwegian social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Austria, Australia, Bosnia & Herzegovina, Canada, Chile, Croatia, France, Greece, Hungary (regarding Medical Care), India, Israel, Italy, Luxembourg, Montenegro, the Netherlands, Portugal, Serbia, Slovenia, Switzerland, Turkey, the United Kingdom and the USA, in addition to a separate Understanding with Quebec. Moreover, there is a social security convention between the Nordic countries.⁹³ Some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with USA, Australia (with an exception for those cases in which both shipowner and seafarer reside in the same country), Bosnia and Herzegovina, Montenegro, Serbia, Chile,
- The seafarer's residence is employed in the agreements between the Nordic countries, with Canada (unless citizen of the other party and working on board a national-flagged vessel), India, UK.⁹⁴
- The registered location of the employer is the connecting factor used in the agreements with Israel (for Norway, the flag State principle is required in addition to).

In general, anyone who either resides or is employed in Norway or on permanent or movable installation on the Norwegian Continental Shelf is compulsorily insured under the National Insurance Scheme. However, and although citizens from EU/EEA/CH/UK countries working on Norwegian ships are compulsorily insured, that is not the case of hotel and restaurant staff on cruise ships registered in the Norwegian International Ship's Register⁹⁵.

The compulsory coverage by the National Insurance Scheme is maintained during a temporary stay abroad, i.e. less than one year. However, if the worker is employed by a third country employer and does not work on board a Norwegian ship (regardless of register), the insurance coverage terminates and do not earn a pension for work performed. Persons who are not insured according to the above mentioned provisions, may apply for voluntary membership in the National Insurance Scheme if certain conditions are met. In this vein, they are entitled to choose the health part, the pension part or both. Membership in the pension part includes the right to unemployment benefits.

The main general social insurance schemes in Norway are the National Insurance Scheme, the Child Benefit Scheme and the Scheme for Cash Benefit for Families with Small Children⁹⁶. Benefits from the National Insurance Scheme are granted according to an Act of 28 February 1997. Child benefits are granted according to an Act of 8 March 2002. Cash benefit for families with small children is granted according to an act of 26 June 1998. According to MISSOC and as of January 2021, the National Insurance Scheme (NIS, folketrygden) is financed by social contributions (paid by employees/self-employed and employers) with some funds provided by State taxation in case of deficit. There are no earmarked taxes. Old-age and other long-term benefits are funded through a pay-as-you-go system.

Seafarers on board Norwegian registries from EU/EEA/CH/UK countries are covered by the National Insurance Scheme, including access to old-age pension. If they are residing in another member State, they are entitled to voluntarily pay the part of taxes (up to 8% of income) dedicated to Norwegian social security.

⁹³ See Norwegian Ministry of Labour and Social Affairs (January 2019). The Norwegian Social Insurance Scheme. Norwegian Ministry of Labour and Social Affairs, 1-29, 28, available at www.regjeringen.no.

⁹⁴ The Social Security (Norway) Order 1991 (Social Security with UK): "

(1) Subject to the provisions of paragraphs (2), (3) and (4) of this Article, where a person is employed on board a ship or vessel of one Party, the legislation of that Party shall not apply to him unless he is ordinarily resident in the territory of that Party. (2) Subject to the provisions of paragraphs (3) and (4) of this Article, where a person who is ordinarily resident in the territory of either Party is employed in employed earner's employment on board a ship or vessel of one Party the legislation of that Party concerning industrial injuries insurance shall apply to him as if he were resident in the territory of that Party. (3) Where a person who is ordinarily resident in the territory of one Party and insured under the legislation of that Party, and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by an employer in the territory of that Party to work on board a ship or vessel of the other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him provided that the employee continues to be employed and paid by that employer. No contributions shall be payable in respect of that employment under the legislation of the latter Party provided that a request for a certificate of continuing liability has been received by the authorities of the former Party within the first four months of the period of detachment and presented to the appropriate insurance authorities of the latter Party within two months of its issue. If either one of the latter conditions is not complied with the legislation of the former Party concerning liability for contributions shall cease to apply from the date of commencement of the period of employment on board a ship or vessel of the latter Party. (4) Where a person who is not normally employed at sea is employed other than as a member of the crew on board a ship or vessel of one Party in the territorial waters of, or at a port of, the other Party, the legislation of the latter Party concerning liability for contributions shall apply to him as if any conditions relating to residence were satisfied in his case provided that he is ordinarily resident in the territory of either Party."

⁹⁵ According to Norwegian Ministry of Labour and Social Affairs (2019), foreign (not EEA) citizens not resident in Norway or any other Nordic country, who are employed on ships in foreign trade, registered in the regular Norwegian Ship's Register, are compulsorily insured only with regard to entitlement to occupational injury benefits and funeral grants. Persons of the same category, but employed on ships in the Norwegian International Ship's Register, are not compulsorily insured for any contingency.

⁹⁶ See Norwegian Ministry of Labour and Social Affairs (January 2019). [The Norwegian Social Insurance Scheme](http://www.regjeringen.no). Norwegian Ministry of Labour and Social Affairs, 1-29, 4, available at www.regjeringen.no. Regulations of 18 February 2005 No. 145 on guarantees for social security entitlements for employees on Norwegian ships; Royal Decree on 18 February 2005 under the Seamen's Act of 30 May 1975 No. 18 section 32. Prepared by the Ministry of Trade and Industry; Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) section 4-7, cf. Formal Delegation of 3 July 2013 No. 974; EEA references: EEA Agreement Annex XVIII point 24 (Regulation (EEC) No 1408/71). Amendments: Amended by Regulations of 19 August 2013 No. 1012, 19 December 2017 No. 2323.



The State alone funds the following benefits:

- lump sum grants in case of maternity and adoption,
- grants to improve the functional ability of daily life,
- basic benefit,
- attendance benefit,
- guaranteed supplementary pension for persons disabled at birth or early in life,
- educational benefits,
- child care benefits,
- transitional benefits for survivors and single, divorced and separated supporters,
- benefits for surviving family nurses,
- means-tested funeral grants,
- advance payments of maintenance payment for children that exceed the reimbursement from the parent liable.

Norway has ratified C102, although as a result of the ratification of Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and pursuant to Article 45 of that Convention certain parts of C102 are no longer applicable. By the same token, Part III of C102 is no longer applicable as a result of the ratification of Medical Care and Sickness Benefits Convention, 1969 (No. 130).

Norway has also ratified the MLC, 2006.

	C102	MLC, 2006
medical care	X	X
sickness benefit	X	X
unemployment benefit	X	
old-age benefit	X	
employment injury benefit	X	
family benefit	X	
maternity benefit		X
invalidity benefit	X	
survivors' benefit	X	

Table 21: Norway, adherence to international treaties

Persons insured under the National Insurance Scheme are entitled to

- old-age pension,
- survivors' pension,
- disability benefit,
- basic benefit and attendance benefit in case of disablement, technical aids etc.,
- work assessment allowance,
- occupational injury benefits,
- benefits to single parents,
- cash benefits in case of sickness, maternity, adoption and unemployment,
- medical benefits in case of sickness and maternity,
- funeral grant.




Old-age benefit is split in two pillars. The basic pension depends on residence in Norway (40 years). The supplementary allowance scheme is neither a part of the comprehensive National Insurance Scheme, nor a part of the Social Assistance Scheme. It is fully financed over the Central Government Budget and it is managed by the Norwegian Labour and Welfare Service. Invalidity benefits are paid to those whose income capacity is permanently reduced by at least 50 per cent due to illness, injury or defect, provided that they have been insured for at least three years up to the contingency. For an insured person who is receiving Work Assessment Allowance when the claim for disability benefit is made, it is sufficient that the income capacity is permanently reduced by 40 per cent.

Paperwork is very complex and if not fulfilled correctly, benefits will not be provided even if payments have been made.

Effective administrative coordination. The social security officers interviewed agree on the effectiveness of the social security coordination across the EU/EEA/CH/UK. They could not report any problematic cases apart from one in which the shipowner seated in Norway was paying contributions for seafarers residing in Norway as well, to the flag State. Being the exception in Article 11(4) of Regulation 883/2004 applicable, the situation had to be regularized. Coordination works also well when it comes to the application of Article 16 of Regulation 883/2004. In this respect, Norway has special arrangements with Poland and Latvia (also with Romania but this agreement has already expired) according to which payments are made to the seafarers' country of residence. Agreements in this respect are also concluded on an individual basis as per Croatian social security administration request.

The seafarers' responsibility in ensuring their rights is more acute in light of the cases where they have to join the system on a voluntary basis. It was highlighted that their responsibility is greater than in shore-based cases to the extent that the internationality of the case makes it more difficult for the State to play its enforcement role. In this vein, the ETF-Norway-1 indicates that

 (10:38)... the employment contract, we see many times, is not good enough. They have not put in your rights there, and the next problem is the personal on the ship's company don't have a clue, don't know anything about it, they only fill in what they have been told to fill in the employment contract. And we have a problem then, we always use the employment contract because this is the document you have to go further on with, and if this is not correctly fill in, you have lost the case before you started it. I think, employment contract is very important on this, and we make sure that everything is noted in as it should be. And that is also a part of the ILO convention. Everybody should have a decent employment contract, etc, etc, but I think we could focus on that. And also the knowledge of the shipowner. (11:10) And also, as I see it, when you are employed in a company, it is stated very clear in the regulation, you should have information about your social security, your agreements, etcetera, etcetera, and all those papers should be on board the ship. But I have never seen it on board of any ship, I can tell you.

Interviewed social security officers acknowledge gaps in information provided to seafarers by the administration, although not that different from the gaps in similar information provided to other migrant workers.

CBAs in Norway discuss sickness benefit and employment injury benefit, but they are managed by private insurance. There are significant complaints about how these private companies operate.



POLAND



POLAND

On board Polish flagged ships		Seafarers residing in Poland	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Polish social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Polish social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Polish social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country. 2. If mobile and a substantial part of the work is not provided in Poland, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i> 3. If shipowner in a third country, national rules apply. According to art. 7 of 1998 Act, seafarers are only entitled to voluntary affiliation and bear alone the financial burden of both employers' and employees' contributions.

Table 22: Poland



The Polish social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Bosnia and Herzegovina, Serbia and Montenegro, Macedonia, USA, Canada, Quebec, Korea, Australia, Ukraine, and Moldova.⁹⁷ None of the agreements that could be consulted (USA, Canada, Australia and Ukraine) contain specific provisions on seafarers with the exception of the agreement with the former Yugoslavia, now applicable to Bosnia and Herzegovina, Serbia, Montenegro, and Macedonia, that applies the flag State principle. Remarkably, the Polish Social Security Service (*Zakład Ubezpieczeń Społecznych - ZUS*) and the Norwegian NAV have concluded an agreement on the basis of Article 16 of Regulation No 883/2004, whereby seafarers residing in Poland and employed on board ships flying the flag of NIS remain covered by Polish social security. The agreement is renewed on a six-month period being the current agreement in force since 1 July 2021 and will be terminated on 31 December 2021.

The mandatory regime covers residents in Poland that work for a Polish-based employer, but not those whose employer is seated outside Poland⁹⁸. According to Article 7 of Act of 13 October 1998 on the Social Insurance System (*Ustawa o systemie ubezpieczeń społecznych*), the right to voluntary coverage for old age and invalidity benefits is granted to persons who do not meet the conditions for obligatory coverage with such insurance⁹⁹. The same applies to sickness, accident and health insurance, i.e. those living in Poland, but working on board foreign-flagged vessels, are only entitled to voluntary health insurance by payment of a fee to the National Health Fund (NFZ) whose amount is calculated in accordance with the period in which the seafarer has not been covered by health insurance in Poland. According to section 68(8)(a) of Act on Health Care Services, as amended in 2015, this period does not include the time in which the seafarer has been working on board a foreign-flagged ship, and thus the requested fee might be either very low or non-existent at all. Nevertheless, the CEACR has concluded that Poland does not ensure that seafarers are treated on equal terms as shore-based workers¹⁰⁰.

According to MISSOC and as of January 2021, the Polish social security system is funded by both, social contributions and taxation (although not earmarked taxes). There are two branches. Social insurance covers old-age benefit, invalidity benefit, sickness and maternity benefits and accidents at work and occupational diseases insurance¹⁰¹, while the welfare system provides health insurance, unemployment benefits and family benefits. Social insurance, health insurance and unemployment benefits are funded by social contributions although the State covers deficits and funds some benefits like some medical services through taxes. The welfare system and family benefits are funded by taxes. The funding of long-term benefits (such as invalidity and survivors benefits) is managed by a pay-as-you-go system. The old-age scheme is mixed, composed of a first pillar financed on a pay-as-you-go basis and a funded second pillar.

Contributions are paid by both employers and employees. However, in the case of seafarers working on a ship flagged in a third country, voluntary payments are accepted but only by the seafarers themselves¹⁰².

⁹⁷ The list is available at the [Polish Ministry of Family, Labour and Social Policy site](#).

⁹⁸ Article 6(1), para. 1, 4 and 5 of the Act of 13 October 1998 on the social insurance system (Official Journal No. 423).

⁹⁹ More specifically, individuals who reside in Poland; are no longer resident, but had been covered by compulsory pension and disability in Poland or are subject to Regulation 883/2004, can enjoy voluntary coverage.

¹⁰⁰ See "The Committee observes that, contrary to shoreworkers, seafarers residing in Poland and employed on board foreign ships (other than EU) would only be entitled to voluntary affiliation and would need to bear alone the financial burden of both employer's and employee's contributions, in breach of the principle established by *Regulation 4.5, paragraph 3*, according to which seafarers who are subject to the national social security legislation are entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers. **The Committee therefore requests the Government to indicate measures taken or envisaged to comply with the principle of equality of treatment between seafarers and shoreworkers as regards social security protection in the case of seafarers serving on board foreign ships (other than EU), in particular by way of actively seeking to conclude bilateral or multilateral social security agreements, for example, with the most important flag States with a view to giving effect to the above principle**".

¹⁰¹ Act of 13 October 1998 on the Social Insurance System

¹⁰² See Article 16(4), para. 2, of the Act on Social Insurance System. Taxes face a similar problem. There is no scheme for them in the country leading to payments abroad because of the lack of application of treaties, as well as cases that emerge as a result of change of flag by the seafarer when the Polish authorities realise that they should have paid taxes in the country. Poland does not have a State aid seafarer scheme.



Poland has ratified C102 and the MLC, 2006.

	C102	MLC, 2006
medical care	X	X
sickness benefit		X
unemployment benefit		X
old-age benefit	X	X
employment injury benefit		X
family benefit	X	
maternity benefit	X	X
invalidity benefit		X
survivors' benefit	X	X

Table 23: Poland, adherence to international treaties

The old-age pension is increased by: 2.0% of the assessment basis for each year of service performed directly as a diver or scuba diver and in the physical fight against terrorism; 1.0% of the assessment basis for each year of direct service: — as a member of the flying crew of aircraft and helicopters, — as a member of the surface vessels. Polish legislation provides an early retirement pension that applies to seafarers upon compliance with some requirements that entitles them to retire at 55 years of age if they are women and at 60 if they are men¹⁰³.

Polish trade unions have concluded a CBA with for example Norwegian Shipowners Association according to which payments to the Polish social security system are included. Although the Polish seafarers are the ones that make the payments to the administration. The CBA applies to the NIS and there is another one for other flags of third countries, both acknowledged by both administrations on the basis of Article 16 of Regulation 883/2004 as indicated above.

Administrative cooperation in these matters within the EU seems to be effective. The ETF-A-Poland could only report cases when the foreign shipowner was not paying contributions to another member State on account of Polish seafarers, and no seafarers' complaints have been recently recorded before ZUS in accordance with the AO-Poland.

¹⁰³ Art. 184 in connection with Art. 32 of the Act of 17 December 1998 on Old Age Pensions and Disability Benefits of the Social Insurance Fund (Official Journal 2021, No. 291).



ROMANIA



ROMANIA

On board Romanian flagged ships		On board Romanian flagged ships	
Seafarers residing in an EU/EEA/CH/UK country regardless of nationality, admitted to Romanian social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the Romanian social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the Romanian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in Romania, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. Seafarers seem not to be specifically contemplated in Romanian law. Therefore, they are excluded from the scheme although basic health insurance is provided to all residing in the country as well as some family benefits.

Table 24: Romania

The Romanian social security regime is applicable in accordance with Regulation 883/2004 and international treaties concluded with Albania, Algeria, Canada, Chile (not in force), Quebec, Korea (Republic of), Libya, Macedonia, Moldova, Morocco, Montenegro, Peru (not in force), Russian Federation, Serbia, Turkey, Ukraine.¹⁰⁴ Most agreements were not available online, but some of them specifically refer to seafarers and their social security coverage:

- The flag principle is used in the agreements with Serbia.
- The seafarer's residence is employed in the agreements with Albania, Canada and Quebec.

Although Romania has ratified the MLC, 2006, the country has not implemented it yet, including Regulation 4.5, Standard A4.5 and Guideline B4.5. Accordingly, the general provisions on access to the system apply, i.e. seafarers residing in the country employed by an employer seated in a third country and working on board a vessel flagged in a third country are not covered by those branches that are funded through social contributions.

According to MISSOC and as of January 2020, the Romanian system is funded through social contributions although the State covers deficits in the State social insurance and finances social assistance. More specifically, the system is based on contributory benefits (old-age, unemployment, health insurance, maternity leave and allowance, and parental benefits) and non-contributory benefits (state allowance for children and families, emergency benefits and financial aid, disability allowance, guaranteed minimum income or social pension). Uninsured people only have access to a minimal package of medical services (urgent surgery, birth, tuberculosis and other epidemic diseases)¹⁰⁵.

There are no earmarked taxes. Old age, invalidity and survivors' benefits are covered by the same rate; in general, they are managed on a pay-as-you-go basis. Local authorities support social assistance as well. The country has a flat-tax rate of 10% and social contributions payable by employers have become the liability of employees: 25% for social security contributions, 10% for health insurance contributions and 2.25% on work insurance¹⁰⁶.

Collective bargaining is being undertaken by Romanian trade unions to include in their CBAs social security provisions to be paid by the shipowners.

¹⁰⁴ The list is available at van Panhuys, C., Kazi-Aoul, S., Binette, G. (2017) *Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements*. ESS – Working Paper No. 57. Geneva : International Labour Office

¹⁰⁵ Decision no. 140 of 21 March 2018 for the approval of the packages of services packages and the Framework Contract that regulates the conditions of medical assistance, medicines and medical devices in the social insurance system for the years 2018–2019. <http://www.casan.ro/106-Government-Emergency-Ordinance-no.-79/2017-for-amending-and-completing-Law-no.-227/2015>

regarding the Fiscal Code. https://static.anaf.ro/static/10/Anaf/legislatie/OUG_79_2017.pdf. See for more explanations, Burlacu, I., Soare, S., Vintila, D. (2020). Migrants' Access to Social Protection in Romania. In Lafleur, J-M, Vintila, D. (eds.). *Migration and Social Protection in Europe and Beyond (Volume 1). Comparing Access to Welfare Entitlements*. Heidelberg: Springer, 361-377, 364.



Romania has ratified C102 and the MLC, 2006. As indicated before, Romania has not taken steps to implement the MLC, 2006 for the time being.

	C102	MLC, 2006
medical care	x	
sickness benefit	x	
unemployment benefit		x
old-age benefit	x	x
employment injury benefit		
family benefit	x	x
maternity benefit	x	
invalidity benefit		
survivors' benefit		

Table 25: Romania, adherence to international treaties

It is not clear how coordination on social security matters with other member States works. The case of Romanian seafarers working on board Norwegian-flagged vessels that requested without success the application Article 16 of Regulation 883/2004 because of the Romanian authorities' inactivity is reported by the ETF-Romania (46:00). The reason to request this is because they would have to contribute for a number of years to get a pension from the Norwegian administration while contributing to the Romanian system would avoid this problem. The number of seafarers involved is around 700.

Romania is a labour-supplying country with around 25,000 seafarers on merchant vessels and around 10,000 seafarers on cruise ships. However, national legislation does not have specific provisions as regards to them. The understanding of AO-Romania is that they should be better covered by the application of the country of residence principle.



UNITED KINGDOM



UNITED KINGDOM

On board British flagged ships		Seafarers residing in the UK	
Seafarers residing in an EU/EEA/CH/UK country or the UK regardless of nationality, admitted to British social security system per Article 11 of Regulation (EC) 883/2004.	Seafarers + shipowner residing in an EU/EEA/CH/UK country are excluded from the British social security system per Article 11(4) of Regulation (EC) 883/2004.	On board EU/EEA/CH/UK flagged ships excluded from the British social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, <i>M. J. Bakker and Minister van Financiën</i> , and C-347/10, <i>Salemink</i>	On board third-country flagged ships 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, <i>SF</i> if shipowner in the UK or an EU/EEA/CH/UK country.
			2. If mobile and a substantial part of the work is not provided in the UK, excluded from in favour of the shipowner's seat in an EU/EEA/CH/UK country, per C-266/13, <i>Kik</i>
			3. If shipowner in a third country, national rules apply. There seems not to be arrangements for these cases although all residing in the UK are entitled to benefits provided by the National Health Service.

Table 26: United Kingdom



The UK's Withdrawal Agreement from the European Union extended the application of Regulation 883/2004 during a transition period that lasted until 31 December 2020. Cross-border employment cases involving the UK and one or more EU/EEA/CH/UK member States will be covered by the EU/EEA/CH/UK social security coordination rules provided that employment continues "without interruption". From 1 January 2021, a Protocol to the EU/UK **Trade and Cooperation Agreement**, on Social Security Coordination governs cross-border work situations between the UK and EU member States. Mobility with Iceland, Liechtenstein, and Norway is covered by another agreement that seems to be in line with the said Protocol¹⁰⁷.

Article SSC.10(4) of the EU/UK Protocol on Social Security Coordination does not deviate from the EU/EEA/CH/UK Regulations:

'For the purposes of this Title, an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a State shall be deemed to be an activity pursued in the said State. However, a person employed on board a vessel flying the flag of a State and remunerated for such activity by an undertaking or a person whose registered office or place of business is in another State shall be subject to the legislation of the latter State if that person resides in that State. The undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.'

Article SSC.11 applies to detached workers in a different manner from the Regulation 883/2004 because it only provides for the home country rule up to 24 months, and does not allow for an extension of 5 years if agreed by the relevant authorities as it happens in the latter. SSC.12 applies to workers engaged in more than one country at the same time in similar terms to the ones provided by Regulation 883/2004, meaning that if a substantial part of the work is done in the employee's country of residence, the latter will apply instead of the flag State; if not, and the flag State is a third State, the employer's country of residence will be applicable.

Taking into account the abovementioned rules, it can be concluded for the time being, that social security of EU/UK residents is similar to the one previous to the Withdrawal Agreement (with the exception of detached workers), including the case law of the Court of Justice on the EU/EEA/CH/UK Regulations. Switzerland and the UK have not concluded any new agreement. There is one bilateral treaty among the two countries concluded in 1969 on **Family Allowances, National Insurance and Industrial Injuries**. It is not clear, however, whether this treaty is still in force.

The UK has concluded international treaties on social security matters with Austria, Bermuda, Barbados, Canada, Chile, Isle of Man, Cyprus, Finland, Jersey and Guernsey, Israel, Jamaica, Japan, Malta, Mauritius, Norway, Philippines, South Korea (ROK), Spain, Sweden, Switzerland, Turkey, United States of America, Bosnia-Herzegovina, Croatia, Serbia & Montenegro and Macedonia.¹⁰⁸ Some of them specifically refer to seafarers and their social security coverage:

- The flag State principle is used in the agreements with Chile, Isle of Man, Jersey and Guernsey, Jamaica, Mauritius (with exceptions applicable to the last four countries¹⁰⁹), Bosnia-Herzegovina, Croatia, Serbia & Montenegro and Macedonia (unless both shipowner and seafarer are residing in the same country), Switzerland (shipowner's place of business in the UK also qualifies).

¹⁰⁷ Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union.
¹⁰⁸ The list of agreements can be consulted at [UK Government site](#).

¹⁰⁹ **Article 9 Mariners and others employed on board a ship or vessel**

(1) Subject to paragraphs (2) to (4), where a person is employed on board any ship or vessel of one Party the legislation of that Party concerning liability for contributions shall apply to him as if any conditions relating to residence were satisfied in his case, provided that he is ordinarily resident in the territory of any Party.

(2) Where a person who is insured under the legislation of one Party and employed either in the territory of that Party or on board any ship or vessel of that Party, is sent by his employer in the territory of that Party to work on board a ship or vessel of any other Party, the legislation of the former Party concerning liability for contributions shall continue to apply to him provided that his employment on board the ship or vessel of that other Party is not expected to last for a period of more than one year.

(3) Where a person who is not normally employed at sea is employed other than as a member of the crew, on board a ship or vessel of one Party, in the territorial waters of, or at a port of, any other Party, the legislation concerning liability for contributions of the Party in whose territory he is ordinarily resident shall apply to him as if any conditions relating to residence were satisfied in his case.

(4) Where a person who is ordinarily resident in the territory of one Party and employed on board any ship or vessel of any other Party is paid remuneration in respect of that employment by a person who is ordinarily resident in, or by an undertaking having a place of business in, the territory of the former Party, the legislation of the former Party concerning liability for contributions shall apply to him as if the ship or vessel were a ship or vessel of the former Party, and the person or undertaking by whom the remuneration is paid shall be treated as the employer for the purpose of such legislation.

- The seafarer's residence is employed in the agreements with Bermuda, Japan, Korea, Norway, USA • The registered location of the employer is the connecting factor used in the agreements with Barbados, Philippines (for both countries, unless seafarer's residence and substantial part of his/her work are in the same country)

The national provisions of the UK system do not seem to contemplate the case of seafarers residing in the country, but working on board ships with which the UK does not have any agreement and to whom any international agreement is applicable. This has been raised by the CEACR in its Direct Request to the country.¹¹⁰

Information provided indicates that whether a seafarer pays UK National Insurance depends on their residence, the employer's base, where work is provided, and the type of work provided. In this vein, there is a distinction between UK residents who work for an employer based in the UK, or on board a UK-flagged ship, or on the UK Continental Shelf, and other seafarers employed by foreigners.

Some foreign employers operate a Pay As You Earn (PAYE) scheme for the benefit of their employees who can apply for a refund if:

- the employer is based outside the EU, Liechtenstein, Iceland and Norway in a country that does not have a reciprocal agreement with the UK, or the terms of a reciprocal agreement with the UK do not affect the National Insurance liability position
- work is performed outside UK waters
- work on a vessel registered outside the EU, Liechtenstein, Iceland and Norway in a country that does not have a reciprocal agreement with the UK, or the terms of a reciprocal agreement with the UK do not affect the National Insurance liability position

Payments can also be made directly to the system if the employer does not operate a PAYE scheme or make National Insurance contributions. Direct payments can also be made if:

- work is performed on a vessel registered outside the UK, and
- the employer is based outside the UK, but the owner/managing owner of the vessel is based within the UK
- Seafarer's employment agreement was entered in the UK

The UK social security system includes the following schemes:

- The National Insurance Scheme (NIS), which provides cash benefits for sickness, unemployment, death of a partner, retirement, etc. People earn entitlement to these benefits by paying National Insurance contributions;
- The National Health Service (NHS), which provides medical, dental and optical treatment and which is normally available free of charge only to people who live in Great Britain and Northern Ireland;
- The child benefit and Child Tax Credit schemes, which provide cash benefits for people bringing up children;
- Non-contributory benefits for certain categories of disabled persons or carers;

Other statutory payments made by employers to employees entitled to maternity, paternity and adoption leave.

The UK system is financed from national insurance contributions paid by employers and employees and general tax revenue. There are important distinctions between insurance based, category and income/asset related benefits. National insurance contributions are divided into five classes depending on employment (Class 1. Primarily paid by employees; employers only pay if earnings rise above a secondary threshold), self-employment (Class 2), voluntary contributions that entitle to basic retirement pension and bereavement benefits (Class 3), Self-employed people earning profits of £9,501 or more a year (Class 4), and benefits in kind such as cars made available for private use and car fuel (Class 5).

¹¹⁰ « *The Committee requests the Government to provide detailed information on the relevant provisions regulating social security protection for seafarers ordinarily resident in the United Kingdom in the branches specified. It further requests the Government to specify whether: (i) social security coverage for the above-mentioned benefits extends to seafarers who reside in the United Kingdom and work on board ships flying the flag of non-EU countries and countries other than those with which reciprocal social security agreements were stipulated; and (ii) consideration has been given to providing comparable benefits to non-resident seafarers working on ships that fly its flag* (Standard A4.5, paragraph 6).»

The UK has ratified C102 and the MLC, 2006.

	C102	MLC, 2006
medical care	x	x
sickness benefit	x	x
unemployment benefit	x	x
old-age benefit	x	x
employment injury benefit		x
family benefit	x	x
maternity benefit		
invalidity benefit		x
survivors' benefit	x	x

Table 27: United Kingdom, adherence to international treaties

Part 3: Conclusions, discussion and recommendations



1. Conclusions

The report was started to answer a number of questions that can be summarily addressed as follows:

1. To what extent and how are European domiciled seafarers covered by a social security system of an EU Member State (based on a selection of countries)?

Regulation 883/2004 as interpreted by the Court of Justice ensures that European domiciled seafarers are covered by a social security system of an EU/EEA/CH member State save the cases discussed in question No. 4. Since the same principles are applied by the Protocol to the EU/UK Trade and Cooperation Agreement, the system allocates responsibility to the EU/EEA/CH/UK flag State unless both shipowner and seafarer are residing in the same EU/EEA/CH/UK country. The same exception to the flag State principle applies if the seafarer is working on board a third-country flagged ship.

Against the backdrop of a seafarer working on board a third-country flagged ship, other exceptions to the flag State principle arise out of cases in which seafarer and shipowner reside in the EU/EEA/CH/UK but in different countries, in which case the seafarer's country of residence will prevail if a substantial part of the work is undertaken in this territory; if not, the shipowner's residence will determine the competent EU/EEA/CH/UK country to provide social security access and benefits. As further discussed in question No. 4, the only case not covered by Regulation 883/2004 is that of seafarers residing on an EU/EEA/CH/UK country but employed by a shipowner seated in a third country – which is not the UK – and working on board a third country flagged ship. In this situation, the MLC, 2006 as implemented in the relevant country provides the competent country for providing access to a social security scheme.

2. Do the EU national systems ensure the minimum coverage as established on international level or do they go beyond?

The EU/EEA/CH/UK national systems ensure to European domiciled seafarers a coverage that goes beyond the international level, at least in those situations covered by Regulation 883/2004. In those cases, discussed in question No. 4, the situation is unclear to the extent that it depends on each national system and how it has implemented the MLC, 2006. Save these cases, equal treatment between seafarers residing in the EU/EEA/CH/UK countries and shore-based workers seems to be ensured which is in contrast with some countries having declared to the ILO the provisions of only some social security branches. However, this declaration has been apparently made with their role of flag States in mind. As countries of the seafarer's residence, they provide their workers with a full coverage, again the only exception being the one discussed in Question No. 4.

The principle of non-discrimination on grounds of nationality ensures that seafarers residing in a country covered by Regulation 883/2004 receive the same treatment as those residing in another EU country. The Protocol to the UK/EU Withdrawal Agreement seems to ensure that this is also the case of UK-based seafarer although some uncertainty remains.

3. Are European domiciled seafarers being treated differently than EU shore-based workers when it comes to social security? If yes, positively or negatively?

The legislation of the twelve selected countries examined in this research is in general terms in line with the principle of equal treatment between shore-based workers and seafarers residing in the country, as indicated in question No. 2.

4. Are there loopholes in the existing regulations (international, European, national) that permit a lack of coverage or make it difficult for European-domiciled seafarers to have their rights applied?

Regulation 883/2004 provides a thorough coverage of most situations in which European-domiciled seafarers might find themselves. However, the case of a seafarer residing in the country, but working on a vessel flagged in a third country, for a shipowner based outside the EU/EEA/CH/UK and whose employment has not been gained through a RPS seated in an EU/EEA/CH/UK country, is not fully covered.

Should the seafarer have been recruited via a RPS, the payment of social security contributions is secured in countries like Belgium and Italy by requesting the RPS to ensure that they are paid. This is also the practice in countries such as Malta. If this link fails, countries are divided among those that do not contemplate the case and those that do, but only request seafarers to pay contributions, either in a mandatory (Croatia) or a voluntary basis (Belgium, France, Norway). Enforcement issues were blamed for not requesting contributions from shipowners. The interviewees also noted that they could not know the number of affected people as they are not in the system. While they might be a reduced number, also because a number of shipowners operate via RPSs, the uncertainty remains.

5. Data related to the actual enjoyment of social security by seafarers (beyond what the legislation says), and information as to whether EU member States are actually coordinating to provide social security to seafarers (application of Regulation 883 to European domiciled seafarers).

The Social Security Coordination System set up by the EU/EEA/CH/UK seems to efficiently work save some cases that have been solved either through inter-State communication, or by resorting to the Administrative Commission that plays a critical interpretative and conciliatory role although lacks enforcement powers. In this vein, some cases might still be open because they have been dropped out of the Administrative Commission's agenda on grounds of having got sufficient legal explanations from the concerned country. Such problems might persist because they are not legal, but concern enforcement.

Mistakes or errors are solved by the country determined by Regulation 883/2004 as responsible for providing social security to seafarers. However, the fact that these cases are cross-border entails that one administration – such as the one of the seafarer's residence – may learn of the problem before the competent authority does. In addition to informing the interested party about which is the competent authority, it is advised to seek coordination among administrations in order to solve the mistake or error. To this end, Article 76 of Regulation 883/2004 lays down a duty of mutual information and cooperation that must guide the interaction between administrations.

In general, compliance and enforcement issues remain to the extent that systems seem to be operating on a reactive basis as it happens as regards to posted workers (Rennuy, 2020), i.e. only when there is a seafarer's complaint or claim, but not by e.g. undertaking random inspections or other type of enforcement measures. Against this backdrop, ELA might play a significant role in the future. Although still affirming its mediating role, ELA can help in enforcing substantive rules in cross-border scenarios, e.g. by organising joint inspections¹¹¹.

Improving access to information by private actors is also part of ELA's mandate helping to curtail one of the reasons for non-compliance. In this vein, it is to note that information available to seafarers on social security matters varies from country to country and the language barrier adds to non-accessibility. The situation is further aggravated if the social security branches are not handled by the same body at national level, but by different bodies and/or layers of administration (national, regional, municipal). States should share good practices in this regard by making information available in a clear and friendly manner, addressing the different cases and including all relevant sources in English for the benefit of foreign seafarers. The Belgian interactive website may act as a reference to the extent that provides an excellent overview in English of (i) the situations in which a seafarer is admitted to the Belgian system, including a detailed reference to multilateral and bilateral agreements in force; (ii) the requirements to join the system; (iii) and dedicated sections to relevant branches such as unemployment, sickness, invalidity and old-age.



In a similar vein, information and education have been highlighted as crucial elements in enhancing the situation in the sector. As said, some administrations have made a significant effort in explaining their schemes in a systematic and easily comprehensible manner in English. That includes a clear overview of the existing international agreements on social security. Other administrations provide only some information and might not be in English, including in instances of direct communications with concerned seafarers. Others do not provide accessible information online. The AO-Belgium-1 indicated in particular that seafarers were not sufficiently educated in these matters during their education time. The latter might be key to ensure that they make actively sure that they are engaged in a national social security system.

The abovementioned issues of compliance and enforcement as well as information also appear in those cases in which the countries place the obligation to join a social security system upon seafarers, i.e. countries indicate that they do not have mechanisms in place to ensure that a seafarer residing in an EU/EEA/CH/UK country and working on board a ship flagged in a third country, actually pays contributions. It seems that it is equally unclear whether foreign shipowners with ships flagged in EU/EEA/CH/UK States' registers are contributing to the applicable social security system. Fraud and mistake investigation is the competence of the applicable administration, however, all have asserted their limitations in ensuring that there is neither fraud nor mistake in cross-border situations. This type of problems is addressed once seafarers make a claim and it turns out that payments have not been got. ELA might have a role to play in addressing this issue once in full operation as indicated above.

The allocation of social security matters within the EU/EEA/CH/UK raises some regulatory issues that depend on how the provision of specific branches is articulated in the relevant country:

- Some branches are provided to residents in the country such as medical care, unemployment benefit and family benefits. Regulation 883/2004 addresses these cases in cross-border situations but does not in cases of disparities in the number of benefits to the extent that only coordinates, but does not harmonize social security matters in the EU/EEA/CH/UK.
- Other branches also require residence in the country in addition to social security contributions. This caveat has nevertheless been solved by the *Salemink* judgment that concludes that the residence principle cannot be applied to seafarers.

Portability and exportability of entitlements seem to be ensured within the EU/EEA/CH/UK, not in vain consider the most comprehensive (and complex) system of portable as well as exportable social security benefits (Taha, Siegmann & Messkoub, 2015). EU/EEA/CH/UK citizens have full non-discriminatory access to all benefits and most of them are portable while third-country nationals based in the EU/EEA/CH/UK are treated equally only after a certain period of residence. Nevertheless, it is to highlight again that the system only coordinates, but does not harmonize social security matters. As said, it is based on coordination mechanisms that only work if requested, not on an *ex officio* basis (at least, in practice).

Exportability of cash benefits in EU/EEA/CH/UK States include pensions, survivors' benefits, death allowances, and benefits for work accidents and occupational diseases. The exception is unemployment benefits that may be exported only up to three months or six if the responsible country extends it. In general, and as said, non-contributory cash benefits can only be paid in the country of residence, an approach that might change with the ongoing review of Regulation 883/2004. As of 2019, the proposed revised Article 65 of Regulation 883/2004 entrusts the payment of unemployment benefits of partially, wholly and intermittently unemployed persons residing in a State other than the one where they last were employed or self-employed, to this last State if they have worked for an uninterrupted period of six months there. However, and as indicated by AO-Malta-2, a shift in the country competent to provide unemployment benefits towards that of the flag State would not benefit seafarers that reside in wealthier countries. The latter is usually the rule in this sector contrary to the pattern found in the case of frontier workers and that has informed the proposed revision of the said article (Pennings, 2020).



2. Discussion

The flag State as a connecting factor for social security matters within the EU/EEA/CH/UK gathers different opinions:

Two interviewees from flag State countries and one from a shipping company highlighted the efficiency and effectiveness of maintaining it to the extent that it helps shipowners to centralize their payments in view of the internationality of the crew. From the shipping company perspective, the fact that the same social security scheme is applied to all working on board was also raised to support this connecting point. Likewise, interviewees from both flag States and labour-supplying countries raise the issue of a race-to-the-bottom within the EU/EEA/CH/UK if the residence principle is to be preferred. However, they did not abide to the flag State principle either, but agreed on the need to move towards a common EU/EEA/CH/UK social security system for seafarers as a way to avoid competitiveness problems (ETF-A-Romania, 36:36). A crew management agent interviewed found the establishment of a centralized system capable to remove disparity between social security systems, including the nature of short term contracts, leading to a more cost effective system on which seafarers could rely irrespective of their residence (other than within the EU/EEA) and the flag of the vessel they have worked on. According to the said agent, the system could be extended to those countries having a bilateral or reciprocal agreement with any EU/EEA member. Another suggestion to address these problems points towards the establishment of a central register (AO-Malta-2, 30:00) as was proposed some years ago by the European Commission.

Interviewees from mainly labour-supplying countries indicate that they prefer the residence principle because of the short-term employment pattern that also affect EU/EEA/CH/UK-based seafarers and work on board flags of convenience (AO:Croatia, 22:58; AO: Norway; AO: Romania, written statement). Nevertheless, they admit that the EU/EEA/CH/UK system works appropriately (AO: Croatia, 23:50).

Some opinions indicate both principles are meant to live together:



Ideal system is both. How can you organize... I think, it is the flag State is more equal sometimes because everybody has the same social security on board the ship...when you have residence, now the Bulgarian and Polish seafarers on board Belgian ships have the same social security protection, the same wages. (...) When you change that, Bulgarian will have Bulgarian social security and a Belgian on board with the same rank will have Belgian social security. And it is a big difference. And that I find a bit a problem. (...) We have lots of discussions in Belgium too because, yeah, the other thing is how do you know that a Belgian seafarer sailing on the flag of the Cayman Islands or Panama, yeah, how can demand to the shipowner to pay their contributions in Belgium. [AO-Belgium-1, 37.49].

AO-Netherlands, 27:00, and AO-Denmark, are of the same opinion.

As already indicated, the interviewees provided their opinion as regards to the flag State for social security matters within the EU/EEA/CH/UK system. As regards to seafarers based outside the region, the residence principle is the prevalent one to the extent that most countries do not include them within their schemes, or provide only some branches. This connecting factor is also being favoured in the newly concluded social security agreements in line with the MLC, 2006's requirements. Nevertheless, and discussing the *SF* judgment which applies the seafarer's residence principle instead of the shipowner's residence when a substantial part of the work is undertaken in the former country and the vessel is flagged in a third country, AO-Netherlands pointed out in a written



statement that ‘SF has not, at least not in the Netherlands, resulted in improved coverage. In response, employers have relocated to areas outside the EU or ships have been reflagged to Member States with low cost social security systems. In both cases the employers’ administration of social security matters is simplified when compared to the MLC 2006 rules. The extent to which this development has taken place since SF and whether a direct causal link can be established, is unclear and consequently needs to be researched’.

There is one common understanding. All interviewees acknowledged that getting payments from shipowners not based in their territories or the EU/EEA/CH/UK is very challenging for their administrative systems. The latter are based upon the flag State principle and this situation has not changed because of Regulation 4.5, Standard A4.5 and Guideline B4.5 of the MLC, 2006. The reason why is not restricted to Article 94 of UNCLOS, but to the fact that national social security systems have been designed to cover national employers and workers, thereby the system applies to ‘national’ shipowners in accordance with the flag registry. Against this backdrop, countries moving towards the seafarer’s residence principle have placed the obligation/option of joining their national social security system upon seafarers. The other side of the coin is the (potential) change in the contribution mode to the scheme that is usually placed upon employers or upon both, employers and employees, and gets altered by this provision. In this vein, some trade unions are already negotiating payments in the CBAs to account for social security purposes.

In order to overcome the problems associated with the shipowner being beyond the relevant social security system, the seafarer’s employment agreement (SEA) might be instrumental. As indicated by Guideline B4.5, paragraph 6, of the MLC, 2006,

‘The seafarers’ employment agreement should identify the means by which the various branches of social security protection will be provided to the seafarer by the shipowner as well as any other relevant information at the disposal of the shipowner, such as statutory deductions from the seafarers’ wages and shipowners’ contributions which may be made in accordance with the requirements of identified authorized bodies pursuant to relevant national social security schemes.’

This provision is to be read in line with Standard A2.1, paragraph 4, which lists among the particulars to be included in the SEA:

‘(h) the health and social security protection benefits to be provided to the seafarer by the shipowner’.

Both provisions provide the basis for establishing a link between the social security administration of the country of the seafarer’s residence and the shipowner by

- requesting the inclusion of the seafarer within a particular national social security scheme, be that of his or her country of residence or that of the flag State; and
- establishing in which manner contributions are to be paid to the relevant scheme, either via deductions from seafarers’ wages and shipowners’ contributions, or via a seafarer’s entitlement in order to cover the contributions owed by the latter to his/her country of residence, where appropriate.

Although Standard A2.1, paragraph 4, only refers to the benefits to be provided by the shipowner, i.e. Regulations 4.1 and 4.2, Guideline B4.5 requests countries to give due consideration to the recommendation of providing further information on the social security branches to which a seafarer is entitled because of his/her employment. In this vein, the information cannot be only as regards to the flag State, but it has to include the seafarer’s country of residence in view of the role it has in ensuring seafarers’ access to a national social security scheme. As indicated by Standard A4.5, paragraphs 5 and 6, countries are requested to cooperate with each other in providing seafarers with a comprehensive social security protection.¹¹² Moreover, and as indicated, the one-stop shop principle applies in cross-border social security situations making this type of specification even more important and requesting a country to be designated as the social security provider. As a matter of fact, the complex system designed by the MLC, 2006, was elaborated based on the fact that many seafarers only get private insurance.

The inclusion in the SEA of the social security benefits provided to the seafarer by the shipowner and the relevant State could help improve the coordination between the benefits provided by the shipowner and the relevant social security administration. For example, Belgium already excludes the payment of medical care and sickness benefit to seafarers during their time on board the ship and thus covered by the shipowner. Likewise, ETF-Croatia raised the issue of seafarers’ complaints for having to pay for these benefits to the national administration because they are not enjoying them.

The seafarer’s country of residence faces significant challenges as regards to subjecting to the national social security scheme a shipowner neither domiciled nor crewing ships registered in its territory: both the conclusion of SEA and/or the said contributions/payments are beyond its jurisdiction. The difficulties encountered by the Netherlands in applying the SF judgment involving a seafarer residing in one EU/EEA/CH/UK country working for a shipowner based in another EU/EEA/CH/UK country, but on board a ship flagged in a third country, have already been noted. Compliance with these provisions is mainly in the hands of the flag State whose inspectors have to examine SEAs on board their ships. To this end, it is to remind that, as indicated by Regulation 5.3, paragraph 1, the role of labour supplying countries is played ‘[w]ithout prejudice to the principle of each Member’s responsibility for the working and living conditions of seafarers on ships that fly its flag’.

Likewise, the interviewees have pointed out the problems that flag States encounter in securing social security protection to seafarers because of mismatches between maritime administrations and social security or tax administrations. For example, it has been reported that shipowners are not informing about the SEAs’ details at the time of registration, but information to social security/tax administrations follows through different channels that might lead to fraud or mistake.

All in all, this discussion illustrates that seafarers’ social security protection depends much on State coordination and cooperation as it happens in any other cross-border situation. The challenge is thus how to ensure seafarers the said protection against the backdrop of a global labour market. Regardless of the preferred principle in allocating social security matters, the EU/EEA/CH/UK system illustrates a highly successful case of the requested coordination that nevertheless has required the development of tools such as EESSI and agencies such as ELA. Against this backdrop, the issue of whether the flag State principle or the residence principle prevails loses relevance because seafarers are ensured the effective coverage of one system. Be that as it may, the features of the shipping sector that are based on a short-employment pattern seem to inform steps taken by major labour supplying countries in Europe towards ensuring social protection on the basis of the residence principle. This is clearly the case of Croatia that systematically resorts to the use of Article 16 of Regulation 883/2004, but also the case of Romania, Poland and Latvia that have concluded an special agreement with Norway based on this principle.

The significance of selecting one or other principle as the prevailing rule becomes apparent if European based seafarers are employed beyond the scope of this highly coordinated environment. The different administrations interviewed in this study do not have information in this regard; however, this is one of the reasons why labour-supplying countries prefer the residence principle over the flag State principle. Again, the other reason is the short-term employment pattern that is also prevalent in the shipping sector. It is important to note, though, that the flexibility embedded in Regulation 883/2004 thanks to Article 16 provides an answer to those countries that favour the residence principle over the flag State principle, that advises against reviewing the existing provisions with which most EU/EEA/CH/UK countries are familiar and comfortable, at least for the time being.

3. Recommendations

At EU/EEA/CH institutional level:

APPROACH THE EUROPEAN BASED SEAFARERS' SOCIAL SECURITY AS AN EU MATTER.

The shortage of qualified seafaring personnel is an issue that requests special attention as the ageing of professionals will be soon withdrawing key workers from service in Europe while the COVID-19 pandemic might be already convincing many to leave the profession. Against this backdrop, it is remarkable that the 2016 Proposal to review Regulation 883/2004 does not even mention seafarers or consider the impact of some proposals upon them. While posted workers are singled out, seafarers who face similar problems to those encountered by posted workers do not receive the same attention. The limitations of this study account for not proposing a particular reform in Regulation 883/2004, however attention should be paid to, first, the impact of the short-term employment pattern on getting access to social security benefits and whether it should advise a change in the prevailing principle in the said Regulation; and second, whether it would be advisable to work with the existing State aid systems to enhance recruitment and retention of European based seafarers. To this end, further research onto the impact of judgment SFon re-flagging and business relocation is recommended.

FURTHER ENHANCE ADMINISTRATIVE COOPERATION AMONG EU/EEA/CH/UK COUNTRIES.

The study reveals that the level of cooperation among countries covered by Regulation 883/2004 is satisfactory. However, some grey areas surface either because of gaps in the regulation such as the case of seafarers employed by foreign-seated shipowners on board third country flagged countries; or mistake or fraud that goes undetected. To this end, ELA should be given a clear mandate of raising countries' attention to these grey areas and run joint labour inspection campaigns to map the situation in the sector.

At a national level:

ENHANCE EDUCATION AND INFORMATION AVAILABLE ON SOCIAL SECURITY SYSTEMS.

In addition to lack of knowledge in view of these matters' complexity, they tend to be disregarded at a young age and gain significance later in life. Accordingly, seafarers' training should include education in these matters. The systems are complex and information on them, in particular on requirements to get benefits, should be made available on a more transparent manner and in English in addition to national languages, taking into account the global character of the profession¹¹³.

ADDRESS THE CASES OF SEAFARERS RESIDING IN THEIR TERRITORY NOT COVERED BY REGULATION 883/2004.

The mandate derives from the MLC, 2006, and requests for addressing the situation of European based seafarers but working for shipowners seated in third countries and on board ships also registered in third countries. Some countries do have rules in this respect that include the obligation of RPSs based in their territory to pay social security contributions that should have been normally paid by those shipowners. Should the seafarer not have been recruited via a RPS based in their territory, the obligation lies in the seafarer him/herself, either on a mandatory or on a voluntary basis.

INCLUDE, AND PROMOTE THE INCLUSION OF, SOCIAL SECURITY PROTECTION WITHIN THE PARTICULARS OF SEA.

As a way to navigate the complex coordination of social security matters, specific reference should be made in the employment contract or the collective bargaining agreement, as to which are the particular social security arrangements in the individual case. This provision should go beyond the social protection to be provided by the shipowner. The onus on clarifying this point is on flag States which should establish clear obligations upon shipowners to always address these matters in SEAs.

ENHANCE COMPLIANCE AND ENFORCEMENT OF NATIONAL SOCIAL SECURITY PROVISIONS.

Although this research is restricted to the functioning of social security coordination provisions and mechanisms in the EU/EEA/CH/UK, some instances were detected in which administrations could improve their performance. In this vein, attention should be paid to the coordination between maritime and social security administrations at a national level in order to identify who is employed on board ships registered in the country. Likewise, flag States should cooperate with the seafarer's country of residence in indentifying the relevant social security system.

¹¹³ It is interesting to recall here Recital 22 of Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01), OJ [2019] C 387/1, that reads as follows: 'The current regulatory complexity and lack of transparency regarding social protection rules in many Member States may mean that people are insufficiently aware of their rights and obligations and of the ways in which they can exercise their rights and comply with their obligations. This could also contribute to a low take-up rate for or low participation in social protection schemes, especially in the case of a voluntary scheme. Transparency can be achieved in different ways, for example by sending updates on individual entitlements, setting up online simulation tools regarding benefit entitlements and creating online and offline one-stop information centres or personal accounts. Digitalisation can, in particular, contribute to improving transparency for individuals.'



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