

ECSCA Position Paper on Seafarers' Remuneration

ECSCA has serious concerns about the implications of the extension of national legislative measures on seafarers' wages and employment conditions, which do not take into consideration the nationality of the seafarer and the ship's flag. Such provisions may undermine the carefully balanced international frameworks that regulate shipping and the collective bargaining agreements between social partners.

Summary

- Globally applicable regulations are indispensable for the smooth functioning of the shipping industry and the global supply chain;
- UNCLOS¹ and the ILO MLC, 2006² confer jurisdiction over seafarers' remuneration and conditions of employment to the flag State;
- All seafarers benefit from the protection afforded by the MLC, 2006 and by EU Laws³, regardless of the length of the international voyage;
- The existing international framework of standards and agreements contains robust built-in mechanisms to ensure legal compliance and to address cases of non-conformity;
- Seafarers terms and conditions are frequently set by national collective bargaining agreements concluded with unions, that go beyond the ILO framework;
- National legislative measures affecting seafarers' wages and working conditions, which do not take into account the nationality and the ship's flag, will jeopardise the well-balanced international crewing system and may cut across applicable collective bargain agreements;
- Social dialogue should be protected allowing employers and seafarers to jointly decide on their labour relations and working conditions in accordance with the models that the MLC, 2006 provides for;
- Under UNCLOS, coastal states are not authorised to impose regulations concerning the manning of foreign flagged vessels, in particular when a vessel is exercising the right of innocent passage in the territorial sea;
- The fundamental freedom to provide maritime transport services, as set out in EU Regulation 4055/86, are vital to the EU single market and the maritime transport industry.

¹ United Nations Convention on the Law of the Sea

² International Labour Organization's Maritime Labour Convention

³ The ILO MLC, 2006 has been ratified by EU member states (except for the Czech Republic and Hungary which are enclosed states) and has been incorporated into EU law through EU Council Directive 2009/13

Introduction

Shipping is a truly global industry that requires global rules to ensure effective and efficient regulation. The protection of seafarers' rights and welfare is therefore enshrined in international legal frameworks, comprising international conventions and worldwide wages and trade agreements.

ECSA widely shares the understanding that the rights and welfare of seafarers need to be protected and supports decent on board working and living conditions for seafarers, including adequate wages, based on international standards and agreements, especially within the ILO framework.

As a fundamental principle, ECSA believes that any specific national regulatory measures on wages should be consistent with international law and principles. Employment conditions matters should be addressed through the ILO's formal regulatory processes and defined by balanced international frameworks and principles set by UNCLOS. ECSA strongly advocates to maintain and strengthen the international framework to safeguard the interests of seafarers across the world.

An international framework fit for purpose for international shipping⁴

The shipping sector, by its very nature, operates in diverse jurisdictions with a truly international workforce, working on all ship types and residing in a large number of countries all over the world. The industry therefore requires a global regime allowing smooth enforcement and compliance for the safe operation of the ship. A fragmented regulatory framework based on regional/national rules would make compliance and enforcement extremely challenging for all parties involved. It is, therefore, essential that the global regime is preserved and not undermined. For this reason, it is firmly established that the responsibility for wages and working conditions for crew members lies with the flag state.

ECSA believes that it is essential to uphold the ILO's formal regulatory processes for minimum wage setting, the carefully balanced international regulatory frameworks and the maritime legal principles under UNCLOS. All seafarers benefit from the protection afforded by the MLC, 2006.

These international frameworks are considered both legal and globally applicable customs that international organisations have worked very hard to develop over the years. In addition, it is a primary principle of international law that seafarers may

⁴ An in-depth legal analysis is attached to this position paper.

also be covered, where applicable, by national collective bargaining agreements concluded with unions that go beyond the ILO framework. It is essential that these are applicable and enforceable, irrespective of the national jurisdictions within which ships may, at various times, be located.

Through social dialogue and collective bargaining, employers and seafarers enhance the quality of labour relations and build trust and mutual respect. The implementation of national coastal state measures deviating from the MLC, 2006 can only undermine this important objective. In this regard, MLC, 2006 promotes direct social dialogue, and urges employers and seafarers to jointly decide on appropriate labour conditions. It also requires the ratifying states to respect the right to collective bargaining as a fundamental right.

Coastal states that depart from the rules of international law which regulates shipping, would seriously undermine and potentially tear down the well-established and well-functioning global framework. This would create legal uncertainty and increase costs for shipowners which ultimately would be borne by consumers and the civil society.

Conclusion

The smooth functioning of the shipping sector and of the global trade is reliant on carefully balanced international regulatory frameworks and principles. The adoption of national coastal state measures on seafarers' wages and working conditions, irrespective of nationality and ship's flag, could undermine the international social dialogue and hence can lead to the worsening of the position of seafarers globally.

As a result, ECSA strongly supports to refrain from undermining internationally agreed conventions that provide for a high level of protection for seafarers and for a level playing field internationally.