



Service contract regarding a study on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC 2006) within and outside the European Union

MOVE/D2/SER/2013-51/2014-627/S12.698853/S12.698859

**Final Report
October 21, 2015**





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Research period: January 2015- October 2015 (10 months)

Acknowledgments

The study team would like to thank all the stakeholders - some of who requested that their identity remains anonymous - who agreed to be interviewed in person, by phone/ Skype, by completing a web survey and through e-mail correspondence. These included representatives of national maritime authorities, seafarers' trade unions, classification societies, recruitment and placement service providers, ship managers, professional associations, ship owners, academics, and, above all, seafarers themselves. The time, patience, and knowledge offered by all stakeholders are greatly appreciated; hopefully, their viewpoints are adequately reflected in this report. We are particularly indebted to each and every one of the stakeholders, whose names are listed in Annex IV, who travelled, some over very considerable distances, to Berlin in June of 2015 to participate in an implementation workshop. We owe a special vote of thanks to Dr. Cleopatra Doumbia-Henry who made great efforts to attend and deliver the keynote address at the workshop. We are also grateful to the Chaplains of the Sailors' Society and to Charles Boyle of Nautilus International, all of whom provided us with very valuable insights at an early stage of our investigation. From among the many stakeholders who supported our efforts, we must mention Tim Springett of the UK Chamber of Shipping, Robert Johnstone of Crewsure Insurance Services Ltd, Kuba Szymanski of Intermanager, Matt Giacomini of the UK Maritime and Coastguard Agency and Mario Zorovic of Zorovic Maritime Services Ltd, all of whom provided us with valuable personal assistance, and arranged for us to meet with and interview their colleagues and associates. We are especially grateful to Prof. Angelica Baylon of the Maritime Academy of Asia and the Pacific for working tirelessly with Captain Emmanuel Regio of the Filipino Association for Mariners' Employment (FAME) and Emmanuel Partido of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) to facilitate the participation of more than one hundred Filipino seafarers in our survey. Lastly, we would like to extend our sincere thanks to Dr. Christine Berg and the team at DG-MOVE that selected our organisations to undertake this study and provided us with an amazing level of support and backing throughout the project.



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Abstract

The Maritime Labour Convention (MLC) was adopted by the International Labour Organisation on 23 February 2006 and entered into force on 20 August 2013. This study was undertaken to assess how the main EU and non-EU seafarers' Labour Supplying States (LSS) having ratified the MLC, or in the process of ratifying it are complying, or intend to comply with the requirements laid down in the MLC. The study examined how the obligations to establish an effective inspection and monitoring system for enforcing labour supplying responsibilities under the MLC are satisfied, in 25 targeted European and non-European LSS and Flag States, 18 of which have ratified the MLC. The study methodology integrated desktop research, stakeholders' interviews, a survey among seafarers and the convening of an implementation workshop attended by representatives of the main stakeholder groups. Separate country profiles were developed that recorded the implementation status of MLC in each of the target States. Findings revealed seafarers' limited awareness of MLC rights and duties specific to recruitment and placement services (SRPS) and social security, difficulties in the implementation of the MLC standards concerning seafarers' employment, gaps in Port State Control inspection, inconsistencies in SRPS regulatory schemes, and lack of SRPS supervision. A series of policy recommendations was developed to address the key study findings relating to seafarers' awareness, the operation and inspection of SRPS and the handling of seafarers' complaints.

Résumé

La convention du travail maritime (CTM ou MLC) a été adoptée par l'Organisation Internationale du Travail le 23 février 2006 et est entrée en vigueur le 20 août 2013. Le but de cette étude était d'évaluer comment les principaux Etats fournisseurs de main d'œuvre dans le secteur de la marine marchande, qu'ils soient membres ou non de l'UE et ayant ratifié la CTM ou étant en cours de ratification, se conforment ou entendent se conformer à certaines dispositions contenues dans la CTM. L'étude porte en particulier sur la manière dont 25 Etats européens et non européens s'acquittent en tant qu'Etat fournisseurs de main d'œuvre ou Etat du Pavillon de leurs responsabilités au regard de la CTM concernant la mise en place d'un système efficace d'inspection et de surveillance des agences de recrutement et de placement des gens de mer. 18 d'entre eux ont ratifié la CTM. La méthodologie utilisée pour réaliser cette étude a consisté à intégrer des recherches d'ordre documentaire, mener des entretiens avec les principales parties concernées, lancer une enquête auprès des gens de mer et organiser un séminaire sur la mise en œuvre de la CTM réunissant des représentants des principaux acteurs du secteur. Des profils par pays ont été élaborés afin de donner un état es lieux sur la mise en œuvre de la CTM dans chacun des Etats couverts par l'étude. Les résultats de l'étude ont mis en évidence une connaissance limitée que les gens de mer ont des droits et des obligations prévus par la CTM concernant les services de recrutement et de placement et



les dispositions applicables en matière de sécurité sociale, les difficultés dans la mise en œuvre des normes de la CTM relatives à l'emploi des gens de mer, des divergences entre les inspections menées par les différents Etats du port, des incohérences au sein des régimes nationaux de réglementation des services de recrutement et de placement, et un manque de surveillance de ces derniers. Une série de recommandations ont été élaborées et proposées pour donner suite aux principales conclusions de l'étude. Elles couvrent notamment l'augmentation des connaissances de leurs droits par les gens de mer, le contrôle des opérations et inspections des services de recrutement et de placement et le traitement des plaintes des gens de mer.



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Abbreviations and definitions of key terms

BIMCO: The Baltic and International Maritime Council. The world's largest international shipping association, providing a wide range of services, including standard contracts and clauses, quality information, advice and education, to shipowners, operators, managers, brokers and agents,

CBA: Collective Bargaining Agreement. Refers to the terms and conditions (articles of agreement) concerning employment onboard ships for a nationality of seafarers.

CEACR: The Committee of Experts on the Application of Conventions and Recommendations. The ILO body charged with examining the application and implementation of ratified Conventions.

Competent Authority: means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of matters concerned by the MLC, 2006.

DMLC: Declaration of Maritime Labour Compliance Certificate. This document shall be attached to the maritime labour certificate, and shall have two parts. **Part I** must be drawn up by the competent authority in the given form (model in Appendix A5-II, MLC, 2006), and must (i) identify the list of 14 matters to be inspected in accordance with the MLC, 2006, (ii) identify, in each of those areas, the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements, (iii) refer to ship-type specific requirements under national legislation, (iv) record any substantially equivalent provisions, and (v) clearly indicate any exemption granted by the competent authority. **Part II** shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement.

EU: European Union. Currently counts in total 28 member countries, which include: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

FS: Flag State. Country that has major role in the international maritime industry as a ship registry.

LSS: Labour Supplying State. The term LSS is used to designate a country that plays a major role in the global maritime labour market, as a significant source of seafarers.



MLC, 2006: Maritime Labour Convention, introduced by the International Labour Organisation (ILO) in 2006. Has been ratified in 20 August 2012 and came into force in 20 August 2013.

NGOs: Non Governmental Organisations. This refers to organisations that are neither government departments or corporations, nor conventional for-profit businesses. For instance, The Mission to Seafarers¹, Apostleship of the Sea², Sailors' Society³, Chaplains of the Sea⁴.

P&I: Protection and Indemnity. A form of mutual maritime insurance provided by P&I Clubs. Each Group club is an independent, non-profit making mutual insurance association, providing cover for its shipowner and charterer members against third party liabilities relating to the use and operation of ships.

RO: Recognised Organisation. Refers to public institutions or other organisations (including those of another Member State, if the latter agrees) that is recognised as competent and independent to carry out inspections or to issue certificates or to do both, concerning ensuring implementation of the MLC.

SRPS: Seafarer Recruitment and Placement Services. Means any person, company, institution, agency or other organisation, in the public or private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners. Also referred to as **RPS (Recruitment and Placement Services)**.

SEA: Seafarers' Employment Agreement. Includes both a contract of employment and articles of agreement.

Seafarer: Means any person who is employed or engaged or works in any capacity on board a ship to which MLC, 2006 applies. The MLC, 2006 does not apply to ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; to ships not ordinarily engaged in commercial activities; to any ship engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks; and to warships or naval auxiliaries.

Shipowner: Means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the MLC, 2006 regardless of whether any other organisation or persons fulfill certain of the duties or responsibilities on behalf of the shipowner.

¹ Source: <http://www.missiontoseafarers.org/>

² Source: <http://www.apostleshipofthesea.org.uk/new-port-chaplain-directory>

³ Source: <http://www.sailors-society.org/>

⁴ Source: <http://www.seafarerscenter.org/chaplains-of-the-sea.html>



1. Executive Summary

The Maritime Labour Convention (MLC, 2006) is a comprehensive international Convention that was adopted by the International Labour Conference of the International Labour Organisation (ILO) in February 2006 in Geneva, Switzerland. The MLC, 2006 has been designed to become a global legal instrument and the fourth pillar of the international regulatory regime for quality shipping. The basic aims of the MLC, 2006 are to ensure comprehensive worldwide protection of the rights of seafarers and to establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships. As of October 2015, 67 States, representing 80% of the world tonnage of ships, have ratified the MLC, 2006⁵.

The global maritime recruitment and placement system is an essential part of the global maritime labour market. Manning agencies and crewing companies, either as subsidiaries of ship management companies, or as independent entities, have the main responsibility of selecting and recruiting seafarers. The MLC, 2006 sets the global minimum standards concerning the seafarers' recruitment and placement in Regulation 1.4. The purpose of this regulation is to ensure that seafarers have access to an efficient and well-regulated recruitment and placement system.

Standard A1.4 focuses on a number of specific areas. It deals with the establishment and definition of public and private seafarer recruitment and placement services (SRPS) and the obligations of Member States where SRPSs are located, concerning the establishment of a system for the operation, supervision and control of SRPS in their territory. The obligations of the RPS with respect to keeping records of qualified seafarers, providing employment, arranging seafarers' placement and informing seafarers of their rights and duties are defined in the standard, as are the responsibilities of the shipowners relating to the protection of seafarers from being stranded, payment of wages and other obligations. The standard also states the expectation that MLC ratifying States shall require similar standards of performance from SRPS based in MLC non ratifying States, and the duty to -in so far as practicable- advise their nationals on the possible problems of signing on a ship that flies the flag of an MLC non-ratifying state. In the frame of this study, special emphasis is given to the provision of seafarers with access to social security protection, no less favourable than that enjoyed by shore workers, and to the topics relating to the recording and handling of seafarers' complaints.

This document and the accompanying annexes comprise the final report of service contract MOVE/D2/SER/2013-51/2014-627/S12.698853/S12.698859 relating to a study

⁵ Source: ILO FAQs (2015). Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_238010.pdf. In addition, India has ratified the MLC, 2006 in October 9, 2015, becoming the 67th ratifying State.



on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC 2006) within and outside the European Union (EU).

The study focused on an examination of 25 European and Non-European Labour Supplying and Flag States, 18 of which have ratified the MLC, 2006 and seven of which were MLC non-ratifying States. The EU Member States examined that had ratified MLC, 2006 were United Kingdom, Spain, Poland, Netherlands, Luxembourg, Malta, Italy, Greece, Germany, France, Denmark, Cyprus, Croatia, Bulgaria, and included one MLC non-ratifying EU Member State, i.e. Romania. The targeted non-EU States that have ratified the MLC, 2006 included in the study were Russia, Morocco, the Philippines and Malaysia. Turkey, Ukraine, Myanmar, Indonesia, India⁶, and China⁷ were included as non-EU States not having ratified the MLC, 2006.

The methodology developed to support the study involved the triangulation of data and methods, as interrelated actions. Secondary data collection included existing literature, ILO documentation, EU legislation and directives, national legislation and directives, PSC information, and other relevant international and European surveys. Utilising desktop research, enriched with corroboration by stakeholders, the study team prepared MLC implementation country profiles for each of the States above. The profiles recorded the legal provisions adopted in the targeted States to ensure compliance with the recruitment and placement service (RPS) and social security provisions of MLC, 2006. A web based survey for the examination of seafarers' experiences and understanding of MLC, 2006, since the Convention came into force (20 August 2013) was undertaken in English, Tagalog and Russian (Cyrillic) with over 500 responses obtained.

Separate interview scripts for eight groups of stakeholders were developed (i.e. Flag States and LSS, both MLC ratifying and non-ratifying States, Classification Societies, SRPS, seafarers' trade unions, shipowners' associations, shipping companies), and for Seafarers' Chaplains. Meetings and interviews with stakeholders (ITF, ECSA, ILO, shipowners' associations, trade unions, port chaplains, Classification Societies, shipping companies, SRPS, FS, LSS and other) were held to address conditions for obtaining recruitment and placement service licences, certificates or other regulatory means; the supervision and monitoring of RPS; and, the procedures for the investigation and handling of seafarers' complaints.

⁶ India has ratified the MLC, 2006 at the last stage of this study. Being a signatory Member State since October 9, 2015 [Source: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_414224/lang-en/index.htm], the country is examined throughout the analysis as an MLC non-ratifying LSS.

⁷ China has ratified the MLC, 2006 at the last stage of this study. Being a signatory Member State since September 8, 2015 [Source: <http://www.lloydlist.com/ll/sector/regulation/article468076.ece>], the country is examined throughout the analysis as an MLC non-ratifying LSS.



An Implementation Workshop was organised in Berlin over the period 22 - 23 June 2015 that was attended by more than 50 participants from European and non-European Labour Supplying and Flag States, as well as other concerned stakeholders.

The findings of the study were presented in three stages - two progress reports and a final report. This final report represents the collation and completion of the information presented in the progress reports.

The definition of the seafarer recruitment and placement service was interpreted in different ways among the FS and LSS, since many aspects of the concepts that have not been clearly defined are concerned. The process of certification and the names of licensed/ certified RPS are not published by most EU Member States, nor by most ratifying and non-ratifying countries. Not all licensed/ certified RPS display their certifications visibly on their Internet sites or elsewhere. Classification societies acting as ROs rarely publish the SRPS certificates issued. There are indications that seafarers often are unaware of the certification/ licensing status of the SRPS that they are using.

Some States differentiate the organisations providing web/ job boards from RPS, and exclude them from the provisions of the MLC, 2006. A significant number of Internet based placement services and "job boards" that consider themselves outwith the scope of the MLC definition is revealed. Private RPSs exist in most LSS, but also unofficially in MLC ratifying States that by the national law allow only a public SPRS. In such a case, private SRPS operate as branches of foreign SRPS. Not all MLC ratifying States (nor EU Member States) have implemented a system for SRPS certification, licensing or other regulatory process; and, where certificates of compliance are requested by shipowners, many of these countries propose voluntary certification scheme utilising classification societies. A few MLC ratifying States have issued guidance to their national seafarers who are seeking employment through an RPS domiciled in an MLC non-ratifying State.

A key goal of MLC, is that ultimately all seafarers, whatever their nationality or residence and whatever the flags of the ships they work on, should be protected by comprehensive social security protection. This goal does not have to be reached at the time of ratification. Regulation 4.5. of the MLC states that an ILO Member State shall ensure that seafarers who are subject to its social security legislation, are entitled to benefit from social security protection no less favourable than that enjoyed by shore workers. To this end Standard A4.5 requires that at the time of ratification seafarers' shall be covered by three out of nine social security branches mentioned in the MLC⁸. ILO Member States have to progressively extend the social protection coverage. The study finds that although some ratifying States state that their social security system covers 9/9 branches mentioned by the MLC, 2006, in practice there are differences among the benefits offered to all nationals (i.e. shore-based workers), and (a) the benefits offered

⁸ The nine branches mentioned in the MLC are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.



to national seafarers working on national-flagged ships, (b) those offered to national seafarers working on foreign-flagged ships⁹, (c) those offered to foreign crew working on national-flagged ships¹⁰. Social protection is primarily provided by the seafarer's State of ordinary residence, but there may be no State-based system of social security for any workers. Many countries may have problems in ensuring that adequate social protection is provided to seafarers working on ships flying their flag but coming from countries providing little or no social protection to their nationals and residents¹¹.

Several MLC ratifying States have made bilateral/multilateral agreements with other countries and shipping companies, within and outside the EU, for collaboration in the employment terms, on the basis of collective bargaining agreements (CBAs).

There are a few countries that have bilateral or multilateral agreements on social security agreements with other countries; however these mechanisms and arrangements do not appear to be widespread and available information is not clear. One form of a multilateral agreement is the EU Regulation on the coordination of social security systems¹².

The issues of on-going and long time benefits due to illness (inability to work) and pensions were found to not being adequately addressed by the MLC, 2006. Although ILO's Seafarers' Pensions Convention (C71; ILO, 1946) was not incorporated in the MLC, 2006, issues concerning relevant social security branches are a problematic matter in the cases of bilateral agreements. Regarding insurance cover for seafarers, the P&I clubs cover only for shipowners' liabilities to third parties and do not provide insurance cover arrangements for crewing agencies. Private insurance cover of seafarers and RPS is evolving after the implementation of the MLC, 2006; however it is not widespread in the industry. The role of private insurance packages, versus or complementary to, that of P&I Clubs coverage needs further examination.

⁹ According to the MLC, 2006, Standard A4.5, §3 and 8, if nationally resident seafarers are working outside the country, on board ships which fly the flag of other States, then the countries concerned should cooperate, through multilateral and bilateral agreements or other arrangements, to provide for, and ensure, the maintenance of social security rights which have been acquired or in course of acquisition. See also: International Labour Standards Department (2015) FAQs, p. 58.

¹⁰ According to MLC, 2006, Standard A4.5, §8, to the extent consistent with the national law and practice of the MS, States shall cooperate (through bilateral/ multilateral/ other arrangements) to ensure maintenance of social security rights (provided through contributory or non-contributory schemes), which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence. See also: International Labour Standards Department (2015) FAQs, p. 58.

¹¹ Source: International Labour Standards Department (2012), Handbook: Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers, June 11, 2012. ISBN: 978-92-2-125537-6. (Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_170388.pdf), p. V.

¹² European Commission (2004), Regulation No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Official Journal of the European Union, L.166/1, 30.4.2004. Online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>



The recording of complaints is a subject that would appear to be of significance when discussing RPS compliance and States' supervision responsibility. Although formal complaint procedures concerning the shipowner, as required under MLC, 2006 are in place, seafarers are reluctant to utilise these procedures, due to fear of establishing their names as "trouble-makers" and limiting their opportunities for future employment. The majority of complaints would appear to be submitted by seafarers to port chaplains, seafarers' trade unions, and to the International Transport Federation (ITF), who either send in their own inspectors or notify the relevant authorities. The ROs that have established their own standards for the certification of SRPS under Reg. 1.4 of MLC, 2006 require the SRPS to have their own complaints procedure.

There are indications from seafarers and representatives of seafarers' trade unions, as well as of a few FS's that practices of deterring seafarers for seeking employment for which they are qualified for, still exist, usually in an indirect way. Varying degrees of respecting the anonymity of the individual complainant seafarer involved are adopted; however in practice the anonymity of the complainant is not always ensured.

The investigation and recording of complaints from the FS and LSS seems absent, since only one country (EU Member, MLC ratifying State) has recorded complaints from August 20, 2013, and has published relevant results.

Based on the above inputs from desktop research, interviews of stakeholders, the seafarers' survey and the implementation workshop, the study team prepared recommendations for policy alternatives at the international, EU and national level. The goal of these policy actions would be to enable the EU and EU Flag States to ensure that the most important LSS implement their responsibilities under the MLC, 2006 pertaining to seafarer recruitment and placement, and work to ensure the social security protection of seafarers.

The recommendations defined by the study team are measures that would both enhance the awareness of seafarers as to their rights under MLC, 2006, and enable MLC stakeholders to better guarantee these rights and duties as required under the MLC, 2006. To achieve this goal four categories of policy recommendations are proposed.

Category A (MLC awareness) relates to the provision of an MLC awareness campaign for seafarers, that could address the delivery of electronic and paper based materials designed to be attractive and engaging while providing relevant information to seafarers from differing national backgrounds and exhibiting differing levels of skills and education. This recommendation is targeted at the EU Social Partners (shipowners represented by ECSA and seafarer unions represented by ETF) and social partners at the national level.

Category B (definition, regulation and operation of SRPS) includes two recommendations that could be implemented by the ILO. The first defines a voluntary SRPS self-assessment and compliance review mechanism. The objective of this recommendation is firstly to provide SRPS with an effective tool for self-evaluation; and secondly, to ensure



that well managed SRPS will become visible to the community of seafarers. SRPS could initially self-validate their SRPS operations against a set of generic MLC, 2006 SRPS operational requirements, that take into account the differing national SRPS licensing/certification and/or other regulatory forms and measures.

After completing the self-assessment, SRPS would have the option to request an independent third-party review of their operations. This review would be performed by a third party validator, accredited and appointed by the organisation implementing this policy. SRPS that successfully pass the review process would be recorded in a database of "gold standard" SRPS.

The second category B recommendations proposes an electronic data-sharing tool to enable stakeholders to exchange information on implementation measures of Reg. 1.4 of MLC, 2006. This would enable the structured sharing of information, legislation and procedures concerning the operation of SRPS and the provision of seafarers' social security, across all MLC stakeholders.

Category C (supervision and inspection of SRPS and, recording and handling of complaints) relates to a set of recommendations that target the EU Member States competent authorities, PSC authorities and the ILO.

The first category C recommendation is to enhance SRPS national reporting by EU Member States, to ensure that all stakeholders involved in the implementation of the MLC, 2006 are aware of the actions taken by EU Member States to certify/license or otherwise monitor the operations of EU-based SRPS. A second recommendation is directed towards the ILO and proposes the development of a comprehensive database of inspection findings (from all sources including, but not limited to, PSC and MOU inspections), seafarers' complaints and other relevant operational findings from all appropriate sources. This recommendation would resolve the MLC data collection challenges faced by MLC practitioners and research staff, including the team conducting this study, associated with the existence of differing MLC compliance data "silos", and the lack of information on seafarers' complaints.

A third category C recommendation proposes the development of enhanced MLC inspection training material in the form of a computer based training (CBT) module designed to support PSC and other MLC inspectors. The projected solution would be a dynamic system, based on test-case inspection examples that would be updated on a regular basis, and could include a self-assessment mechanism. This recommendation would ensure consistency of the MLC, 2006 inspection procedures world-widely, and provide specific guidance on elements of the inspection process that are difficult to assess, e.g. the obligations of RSPS and social security provisions.

The last category C recommendation relates to the establishment of a new inspection regime for SRPS, within and outside the EU, similar to the internationally based system



of compliance applicable to the STCW Convention. The implementation of this recommendation is targeted at the LSS and EU competent authorities.

Category D (forum for the promotion of bilateral/ multilateral agreements for seafarers' employment, social security and insurance coverage) proposes further research and discussion at the national level. It recommends the initiation of a forum of discussion for of bilateral/ multilateral collective bargaining agreements among EU Member States, and between EU Members and non-EU States. It further proposes research into the feasibility of establishing bilateral/ multilateral agreements on social security and comprehensive insurance coverage, facilitated by a dedicated support fund. The study team is aware that the subjects of this specific recommendation fall within the exclusive competence of the EU Member States.



2. Synthèse

La convention du travail maritime (CTM ou MLC, 2006) est une convention internationale générale qui a été adoptée par la Conférence Internationale du Travail de l'Organisation Internationale du Travail (OIT) en février 2006 à Genève, Suisse. La CTM a été conçue pour devenir un instrument juridique global et constitue le quatrième pilier du régime réglementaire international visant à assurer un système de transport maritime de qualité. Les objectifs fondamentaux de la CTM sont d'assurer au niveau mondial une protection complète des droits des gens de mer et d'établir des conditions de concurrence équitables pour les Etats et les armateurs qui sont engagés à fournir des conditions de travail et de vie décentes aux gens de mer, les protégeant contre la concurrence déloyale des navires ne répondant pas à ces normes minimales. En octobre 2015, la CTM avait été ratifiée par 67 Etats représentant 80% de la flotte mondiale¹³.

Le système global de recrutement et de placement des gens de mer représente une partie essentielle du marché du travail maritime au niveau global. Les agences de recrutement et les entreprises fournissant les équipages, en tant que filiales des sociétés gestionnaires des navires ou entités indépendantes, détiennent la principale responsabilité de sélectionner et recruter les gens de mer. La règle 1.4 de la CTM établit les normes globales minimales relatives au recrutement et au placement des gens de mer. Le but de ce règlement est d'assurer aux gens de mer l'accès à un système de recrutement et de placement efficient et bien réglementé.

La norme A1.4 se concentre sur plusieurs domaines spécifiques. Elle porte notamment sur la création et la définition des services publics et privés de recrutement et de placement de gens de mer, et les obligations des Etats membres où ces services sont opérant, concernant la mise en place d'un système pour le fonctionnement, la surveillance et le contrôle des services de recrutement et de placement des gens de mer sur leur territoire. Les obligations des services de recrutement et de placement des gens de mer portent notamment sur la tenue d'un registre des gens de mer qualifiés, la création d'emplois, l'organisation du placement des gens de mer et la nécessité de les informer de leurs droits et de leurs devoirs tels qu'ils sont définis dans la norme, comme les responsabilités des armateurs en matière de protection des gens de mer contre l'abandon, de paiement des salaires et d'autres obligations liées aux conditions de travail et d'emploi. La norme spécifie que les Etats ayant ratifié la CTM doivent exiger des critères de performance semblables des services de recrutement et de placement des gens de mer basés dans des Etats qui n'ont pas ratifié la CTM, et leur attribue également la responsabilité d'informer leurs ressortissants des problèmes qui peuvent résulter d'un engagement sur un navire battant le pavillon d'un Etat qui n'a pas ratifié la CTM. Dans le

¹³ Source: ILO FAQs (2015). En ligne: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_238010.pdf En plus, l'Inde a ratifié la CTM le 9 octobre 2015, devenant le 67^{ème} Etat l'ayant ratifié



cadre de cette étude, une attention particulière porte sur la nécessité d'assurer aux gens de mer un accès à la sécurité sociale, qui ne soit pas moins favorable que celle dont jouissent les travailleurs employés à terre, ainsi qu'à l'enregistrement et au traitement des plaintes des gens de mer.

Le document et les annexes qui l'accompagnent comprennent le rapport final de contrat de service MOVE/D2/SER/2013-51/2014-627/S12.698853/S12.698859 relatif à une étude sur la mise en œuvre des responsabilités des fournisseur de main-d'œuvre conformément à la CTM à l'intérieur et à l'extérieur de l'Union Européenne.

L'étude est centrée sur l'analyse de la situation au sein de 25 Etats européens et non européens, qui sont Etats fournisseurs de main d'œuvre et/ou Etats du pavillon, dont 18 ont ratifié la CTM et 7 ne l'ont pas ratifiée. Les Etats européens examinés qui ont ratifié la CTM sont le Royaume-Uni, l'Espagne, la Pologne, les Pays-Bas, le Luxembourg, Malte, l'Italie, la Grèce, l'Allemagne, la France, le Danemark, Chypre, la Croatie et la Bulgarie, auxquels s'ajoute la Roumanie qui n'a pas ratifié la CTM. Les Etats non européens qui ont ratifié la CTM qui sont couverts dans cette étude sont la Russie, le Maroc, les Philippines et la Malaisie. La Turquie, l'Ukraine, le Myanmar, l'Indonésie, l'Inde¹⁴ et la Chine¹⁵ sont également couverts par le champ de l'étude en tant que Etats non européens n'ayant pas ratifié la CTM.

La méthodologie utilisée pour réaliser l'étude a été basée sur la "triangulation" des données et des méthodes, en tant qu'actions en corrélation entre elles. La collection de données a pris en compte à la fois les publications existantes en la matière, la documentation de l'OIT, la législation et les directives de l'UE liées à la CTM, la législation et les directives nationales, les informations sur les inspections menées par les Etats du port, ainsi que d'autres publications et enquêtes internationales et européennes considérées comme pertinentes. A travers l'utilisation des documentations récoltées, enrichie par la confirmation de ces informations auprès des acteurs concernés, l'équipe de recherche a élaboré des profils par pays sur la mise en œuvre de la CTM pour chacun des Etats mentionnés ci-dessus. Les profils par pays offrent une analyse des dispositions juridiques adoptées dans les Etats ciblés pour assurer la conformité de leurs législations nationales avec les dispositions de la CTM concernant les services de recrutement et de placement ainsi que celles relatives à la sécurité sociale. Un sondage en ligne pour comprendre les sentiments des gens de mer sur la CTM ainsi que leur compréhension de

¹⁴ L'Inde a ratifié la CTM pendant la dernière phase de cette étude. Etant un Etat membre signataire depuis le 9 octobre 2015 [Source: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_414224/lang-en/index.htm], le pays a été examiné tout du long de l'analyse en tant qu'Etat fournisseur de main d'œuvre n'ayant pas ratifié la CTM.

¹⁵ La Chine a ratifié la CTM pendant la dernière phase de cette étude. Etant un Etat membre signataire depuis le 8 septembre 2015 [Source: <http://www.lloydlist.com/ll/sector/regulation/article468076.ece>], le pays a été examiné tout du long de l'analyse en tant qu'Etat fournisseur de main d'œuvre n'ayant pas ratifié la CTM.



la CTM après l'entrée en vigueur de la convention (20 août 2013) a été réalisé en anglais, tagalog et russe (cyrillique). Plus de 500 réponses ont été obtenues et analysées.

Des questionnaires d'interview ont été élaborés pour huit groupes de cible différents (c'est-à-dire les Etats du pavillon et Etats fournisseurs de main d'œuvre, Etats ayant ratifié ou pas la CTM, sociétés de classification, syndicats des gens de mer, associations des armateurs, entreprises de transport maritime) et pour les chapelains des gens de mer. Des réunions et des entretiens avec les principaux acteurs (ITF, ECSA, OIT, associations des armateurs, syndicats, chapelains de port, sociétés de classification, entreprises de transport maritime, services de recrutement et de placement, Etats du pavillon, Etats fournisseurs de main d'œuvre et d'autres) ont été organisés afin d'analyser notamment les conditions nécessaires pour obtenir les permis de service de recrutement et de placement, les brevets ou d'autres moyens réglementaires ; la surveillance et le contrôle des services de recrutement et de placement ; et les procédures pour la vérification et le traitement des plaintes des gens de mer.

Un séminaire a été organisé à Berlin le 22 et le 23 juin 2015, qui a rassemblé plus de 50 participants ressortissants d'Etats fournisseurs de main d'œuvre et d'Etats du ports, européens et non européens, ainsi que d'autres acteurs concernés.

Le résultat de l'étude ont été présenté en trois étapes – deux rapports intérimaires et un rapport final. Le rapport final représente l'unification et la finalisation des informations présentées dans les rapports intérimaires.

Etant donné que de nombreux aspects relatifs aux concepts liés aux services de recrutement et de placement des gens de mer n'ont pas encore été clairement définis, la définition de service de recrutement et de placement des gens de mer a été interprétée de manière différente parmi les Etats du pavillon et les Etats fournisseurs de main d'œuvre,. Le processus de certification et les noms des services de recrutement et de placement autorisés ou certifiés ne sont pas publiés dans la plupart des Etats de l'UE, et non plus par la plupart des pays ayant ou non ratifié la CTM. Les certifications ne sont pas affichées en évidence sur les sites internet de tous les services de recrutement et de placement autorisés ou certifiés, ou ailleurs. Les sociétés de classification, agissant en qualité d'organisations reconnues, ne publient que rarement les certificats de service de recrutement et de placement délivrés à ces services. Il y a des indications selon lesquelles les gens de mer ignorent souvent si le service de recrutement et de placement qu'ils utilisent a été autorisé ou certifié.

Certains Etats font la différence entre les associations fournissant un tableau d'offres d'emploi, qu'il soit ou non postés sur internet, et les services de recrutement et de placement, et excluent les premières des dispositions de la CTM. L'étude a révélé que de nombreux services de placement en ligne et tableau d'offres d'emploi se considèrent en dehors du champ d'application de la définition posée par la CTM. Des services privés de recrutement et de placement existent dans la plupart des Etats fournisseurs de main d'œuvre, mais aussi de façon officieuse dans des Etats ayant ratifié la CTM où la



législation nationale n'autorise que des services publics. Dans ce cas, les services de recrutement et de placement opèrent en tant que filiales de services de recrutement et de placement étrangers. Certains Etats ayant ratifié la CTM (ou Etats membres de l'UE) n'ont pas mis en œuvre un système de certification ou d'autorisation des services de recrutement et de placement, ou d'autres procédures réglementaires ; et, lorsque des certificats de conformité sont demandés par les armateurs, plusieurs de ces pays proposent un système de certification volontaire en utilisant des sociétés de classification. Seulement quelques Etats ayant ratifié la CTM ont offert un service d'orientation aux gens de mer leurs citoyens qui cherchent un emploi à travers un service de recrutement et de placement domicilié dans un Etats qui n'a pas ratifié la CTM.

Un objectif clé de la CTM est d'assurer que finalement tous les gens de mer, quelle que soit leur nationalité ou résidence et quel que soit le pavillon du navire à bord duquel ils travaillent, soient protégés par une sécurité sociale complète. Cet objectif ne doit pas être nécessairement atteint au moment de la ratification. La norme 4.5 de la CTM prévoit qu'un Etat membre de l'OIT doit veiller à ce que tous les gens de mer qui sont soumis à sa législation en matière de sécurité sociale puissent bénéficier d'une sécurité sociale qui ne soit pas moins favorable que celle dont jouissent les travailleurs employés à terre. A cette fin, la norme A4.5 établit qu'au moment de la ratification les gens de mer doivent être couverts par trois des neuf branches de sécurité sociale mentionnées par la CTM¹⁶. Les Etats membres de l'OIT doivent ensuite progressivement étendre la couverture de la protection sociale. L'étude relève que, bien que certain Etats signataires affirment que leur système de sécurité sociale assure neuf branches sur les neufs mentionnées par la CTM, dans la pratique il y a des écarts entre les avantages offerts à tous les citoyens (c'est-à-dire les travailleurs employés à terre) et (a) les avantages offerts aux gens de mer nationaux travaillant à bord de navires battant leur pavillon national (b) ceux offerts aux gens de mer nationaux travaillant à bord de navires battant pavillon d'un pays tier¹⁷ (c) ceux offerts aux membres d'équipage non-nationaux travaillant à bord des navires battant leur pavillon national¹⁸. La protection sociale est garantie d'abord par l'Etat de

¹⁶ Les neuf branches mentionnées par la CTM sont les soins médicaux, les indemnités de maladie, les prestations de chômage, les prestations de vieillesse, les prestations en cas d'accident du travail ou de maladie professionnelle, les prestations familiales, les prestations de maternité, les prestations d'invalidité et les prestations de survivants.

¹⁷ Conformément à la CTM, norme A4.5, §3 et 8, si les gens de mer résidant habituellement sur leurs territoires travaillent à l'étranger, à bord de navires battant pavillon d'un pays différent, les pays concernés devraient coopérer à travers des accords bilatéraux ou multilatéraux, pour fournir et assurer le maintien des droits relatifs à la sécurité sociale, soit qu'il s'agit de droits acquis ou de droits en cours d'acquisition. Lire aussi : International Labour Standards Department (2015) FAQs, p. 58.

¹⁸ Conformément à la CTM, norme A4.5, §3 et 8, les Etats devraient coopérer (à travers des accords bilatéraux/multilatéraux/d'autres solutions) dans la mesure compatible avec la législation et les pratiques nationales pour garantir le maintien des droits relatifs à la sécurité sociale (qu'ils soient assurés par des systèmes contributifs ou non contributifs), qu'il s'agit de droits acquis ou de droits en cours d'acquisition par tous les gens de mer, quel que soit leur lieu de résidence. Lire aussi : International Labour Standards Department (2015) FAQs, p. 58.



résidence habituelle des gens de mer, mais il pourrait y avoir le cas où aucun système public de sécurité sociale ne s'applique à bord. De nombreux pays pourraient rencontrer des problèmes pour s'assurer qu'une protection sociale suffisante soit garantie aux gens de mer qui travaillent sur des navires battant leurs pavillons mais qui proviennent de pays offrant à leurs citoyens et résidents une protection sociale réduite ou inexistante¹⁹.

Plusieurs Etats ayant ratifié la CTM ont passé des accords bilatéraux ou multilatéraux avec d'autres pays et des entreprises de transport maritime, à l'intérieur comme à l'extérieur de l'UE, pour coopérer au sujet des conditions de travail sur la base de conventions collectives.

Certains Etats ont signé des accords bilatéraux ou multilatéraux avec d'autres pays ayant pour objet la sécurité sociale ; cependant, ces mécanismes et dispositifs ne semblent pas être répandus et les informations sur cette question ne sont pas claires. Un exemple d'accord multilatéral est représenté par le règlement de l'UE portant sur la coordination des systèmes de sécurité sociale²⁰.

Les questions relatives aux indemnités continues et de longue durée en cas de maladie (incapacité de travail) et de retraite ne sont pas suffisamment examinées par la CTM. Bien que la Convention sur la Retraite de gens de mer de l'OIT (C71 ; OIT, 1946) ne soit pas intégrée dans la CTM, les questions relatives à des branches importantes de la sécurité sociale posent des problèmes lors des accords bilatéraux.

En matière d'assurance pour les gens de mer, les P&I Clubs (clubs de protection et d'indemnité) ne couvrent que la responsabilité des armateurs envers les tiers et n'offrent pas de couverture d'assurance pour les agences de recrutement d'équipage. La couverture d'assurance privée des gens de mer et des services de recrutement et de placement a évolué après l'entrée en vigueur de la CTM ; cependant, elle n'est pas diffusée dans ce secteur. Le rôle de l'assurance privée, en remplacement ou en complément de l'assurance offerte par le P&I Clubs, nécessite un examen plus approfondi.

L'enregistrement des plaintes représente une question importante lorsqu'on évalue la conformité des services de recrutement et de placement et la responsabilité de surveillance de l'Etat. Bien que des procédures officielles de dépôt de plainte contre l'armateur soient mises en place, comme l'exige la CTM, les gens de mer hésitent à les

¹⁹ Source: Département des normes internationales du travail (2012), Guide: Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers, June 11, 2012. ISBN: 978-92-2-125537-6. (En ligne: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_170388.pdf) page V

²⁰ Commission européenne (2004), Règlement No. 883/2004 du Parlement européen et du Conseil du 29 avril 2004 portant sur la coordination des systèmes de sécurité sociale, Journal officiel de l'Union européenne, L.166/1, 30.4.2004. En ligne: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>



utiliser, par crainte d'être considérés des « fauteurs de troubles » et de limiter leurs chances de trouver un emploi par la suite. Il semblerait que la majorité des plaintes sont présentées par les gens de mer aux chapelains de mer, aux organisations syndicales des gens de mer, et à la Fédération internationale des ouvriers du transport (ITF), qui envoient leurs propres inspecteurs ou informent les autorités compétentes. Les organisations reconnues qui ont élaboré leurs propres normes pour la certification des services de recrutement et de placement conformément à la norme 1.4 de la CTM exigent de ces services d'avoir leur propre procédure de traitement de plaintes. Selon certaines indications provenant des gens de mer et des représentants de syndicats des gens de mer, ainsi que des Etats du pavillon, il y a encore des pratiques (généralement indirectes) visant à dissuader les gens de mer à rechercher un emploi pour lequel ils sont qualifiés. On observe différents degrés de respect de l'anonymat du plaignant individuel ; dans la pratique, toutefois, l'anonymat du plaignant n'est pas toujours garanti.

La vérification et l'enregistrement des plaintes par les Etats du pavillon et les Etats fournisseurs de main d'œuvre semblent inexistantes, étant donné qu'un seul pays (membre de l'UE, signataire de la CTM) a enregistré des plaintes après le 20 août 2013, et a publié des conclusions pertinentes.

Sur la base des informations explicités ci-dessus provenant de la recherche documentaire, des entretiens avec les parties prenantes, de l'enquête auprès des gens de mer et du séminaire sur la mise en œuvre de la CTM, l'équipe de chercheurs a élaboré des recommandations pour des politiques alternatives à niveau international, européen et national. L'objectif de ces mesures politiques serait de permettre à l'UE et aux Etats européens du pavillon de garantir que les Etats fournisseurs de main d'œuvre respectent leurs responsabilités conformément à la CTM en ce qui concerne le recrutement et le placement de gens de mer, et s'emploient à assurer la couverture en matière de sécurité sociale des gens de mer.

Les recommandations élaborées par l'équipe représentent des mesures qui pourraient à la fois améliorer la connaissance des gens de mer en ce qui concerne leurs droits assurés pas la CTM, et permettre aux acteurs concernés par la CTM de mieux garantir ces droits et ces obligations comme l'exige la convention. Pour atteindre cet objectif, quatre catégories de recommandations de mesures sont proposées.

La catégorie A (amélioration de la connaissance de la CTM) concerne la mise en place d'une campagne de sensibilisation des gens de mer à la connaissance de la CTM, qui pourrait comprendre la distribution de documents, en version électronique et papier, conçus pour être intéressants et captivants, tout en fournissant des informations pertinentes aux gens de mer issus de nationalités différentes et ayant différents niveaux de compétences et d'éducation. Cette recommandation est adressée principalement aux partenaires sociaux de l'UE (les armateurs représentés par l'ECSA et les syndicats des gens de mer représentés par l'ETF) et aux partenaires sociaux au niveau national.



La catégorie B (définition, régularisation et gestion des services de recrutement et de placement des gens de mer) comprend deux recommandations qui pourraient être mises en œuvre par l'OIT. La première définit un mécanisme volontaire d'auto-évaluation et d'examen de conformité aux normes, mise en place par les services de recrutement et de placement des gens de mer. L'objectif de cette recommandation est en premier lieu de donner aux services de recrutement et de placement un outil efficace pour assurer leur auto-évaluation ; en deuxième lieu, d'assurer que les services de recrutement et de placement de qualité deviennent plus visibles pour la communauté des gens de mer. Les services de recrutement et de placement pourraient auto-certifier leurs opérations par rapport à un ensemble de prescriptions opérationnelles génériques en accord avec la CTM, qui prennent en considération les différents systèmes d'accréditation et de certification des services de recrutement et de placement des gens de mer, et d'autres standards et mesures réglementaires.

Après l'autoévaluation, les services de recrutement et de placement auraient la possibilité de demander un examen de leurs activités à un tiers indépendant. Cet examen serait réalisé par une tierce partie, accréditée et nommée par l'organisation chargée de la mise en œuvre de cette politique. Les services de recrutement et de placement qui passent ce processus de révision seraient enregistrés dans une base de données de « gold standard » (c'est-à-dire la norme de référence) des services de recrutement et de placement.

La deuxième recommandation de la catégorie B propose un outil électronique de partage de données pour permettre aux parties prenantes d'échanger des informations sur les mesures de mise en œuvre de la norme 1.4 de la CTM. Cela permettrait le partage structuré des informations, des mesures législatives et des procédures relatives à la gestion des services de recrutement et de placement et à la garantie aux gens de mer d'une sécurité sociale, parmi tous les acteurs de la CTM.

La catégorie C (surveillance et contrôle des services de recrutement et de placement et enregistrement et gestion des plaintes) concerne un groupe de recommandations qui sont adressées aux autorités compétentes des Etats membres de l'UE, aux autorités de contrôle des Etats du port et à l'OIT.

La première recommandation de catégorie C est de développer la production par les Etats membres de l'UE de rapports nationaux sur les services de recrutement et de placement des gens de mer, pour que toutes les parties prenantes concernées par la mise en œuvre de la CTM soient conscientes des actions entreprises par les Etats membres de l'UE pour certifier/autoriser ou contrôler autrement les opérations des services de recrutement et de placement basée dans l'UE. Une deuxième recommandation est ciblée à l'OIT et propose la création d'une base de données complète sur les conclusions des inspections (de toutes sources y compris, mais sans s'y restreindre, les inspections MOU et celles du contrôle des Etats du port), les plaintes des gens de mer et d'autres constatations opérationnelles pertinentes émanant de toutes sources appropriées. Cette



recommandation résoudrait les défis en matière de collecte des données auxquels sont confrontés les professionnels et le personnel de recherche de la CTM, y compris l'équipe qui a mené cette étude, en combinaison avec l'existence de différentes sources d'informations de conformité, et le manque de données concernant les plaintes des gens de mer. Une troisième recommandation de catégorie C propose de développer des matériels améliorés de formation en d'inspection conformément à la CTM, sous la forme d'un module de formation informatisée conçu pour supporter le contrôle des Etats du port et d'autres inspecteurs prévus par la CTM. La solution envisagée serait celle d'un système dynamique s'appuyant sur des exemples de cas type d'inspection qui seraient mis à jour régulièrement, et qui pourraient inclure un mécanisme d'auto-évaluation. Cette recommandation pourrait assurer la cohérence des procédures d'inspection de la CTM dans le monde entier, et pourrait fournir une orientation précise sur des éléments du processus d'inspection qui sont difficiles à évaluer, par exemple les obligations des service de recrutement et de placement des gens de mer et les prestations de sécurité sociale.

La dernière recommandation de catégorie C concerne la mise en place d'un nouveau régime d'inspection pour les services de recrutement et de placement, à l'intérieur et à l'extérieur de l'UE, similaire au système international de contrôle de conformité applicable à la convention STCW. La réalisation de cette recommandation est adressée aux Etats fournisseurs de main d'œuvre et aux autorités compétentes de l'UE.

La catégorie D (forum pour la promotion des accords bilatéraux/multilatéraux pour l'emploi des gens de mer, la sécurité sociale et la couverture d'assurance) suggère des recherches et des discussions plus approfondies à niveau national. Il est ici recommandé de lancer un forum de discussion sur les conventions collectives bilatérales/multilatérales entre Etats membres de l'UE, et entre Etats membres de l'UE et Etats non européens. A cela s'ajoute une recherche de faisabilité sur la conclusion d'accords bilatéraux/multilatéraux concernant la sécurité sociale et la couverture complète d'assurance, facilitées par la création d'un fonds dont le but exclusif serait de soutenir ce dispositif. L'équipe de chercheurs est consciente que les thèmes de cette recommandation spécifique relèvent de la compétence exclusive des États membres de l'UE.



3. Structure of this report

The structure of this report is based on the provision of the main body supported by a number of Annexes.

Sections 1 and 2 provide the executive summary to the report in both English and French. The present section (3) outlines the overall structure of the report.

Section 4 describes the methodology utilised by the study team and the data collection approach.

Section 5 provides the study findings in terms of MLC, 2006 ratification status, relevant results from CEACR, PSC and MOU actions, and summaries from the annexed country profiles, the implementation workshop organised in Berlin and from undertaking a survey of seafarers and interviewing shipowners' associations, shipping companies and SRPS.

Section 6 includes an analysis of the findings per topic, with input from all data sources used (primary and secondary).

Section 7 describes a set of policy recommendations, proposed by the study team to address the findings described in Section 6.

Section 8 provides a listing of References.

Section 9 includes six annexes (published as a separate document) that provide details of the data obtained during the execution of the study that support the information and policy recommendations provided in this report.

Innovation and significance of the study

The methodology used for the data collection in the current study is based on triangulation of methods (i.e. desktop research, personal interviews, on-line questionnaire) and data sources (seafarers and stakeholders groups; the latter representing all those involved in the implementation of the MLC, 2006; i.e. FS and LSS competent authorities, public and private SRPS, shipowners' associations and seafarers' trade unions, international organisations, classification societies, PSC and MOUs, NGOs and other).

The above approach enabled the findings to reflect the viewpoints of all concerned stakeholders; as such, it provides a comprehensive and holistic perspective that the study team believes could support future EU and ILO policy initiatives. Although there are limitations concerning the seafarers' survey, overall the online survey was useful for understanding the awareness of seafarers' on their rights and duties stemming from the MLC, 2006.



Limitations

Information included in the country profiles has been collected from primary and secondary sources. Where the competent authority, a stakeholder from the territory or another relevant secondary source was not available or unwilling to participate in the study, this was noted in the respective country profiles.

Findings from the seafarers' survey are to be used as indicative and not to support generalisation, as the sample did not fully represent the global maritime labour workforce.

4. Methodology

4.1. Background

MLC, 2006 requirements concerning RPS

The Maritime Labour Convention (MLC, 2006) is a comprehensive international Convention that was adopted by the International Labour Conference of the International Labour Organisation (ILO) in February 2006 in Geneva, Switzerland. The MLC, 2006 has been designed to become a global legal instrument that is the fourth pillar of the international regulatory regime for quality shipping. The basic aims of the MLC, 2006 are to ensure comprehensive worldwide protection of the rights of seafarers and to establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting companies and States from unfair competition on the part of substandard ships. As of October 2015, 67 States, representing 80% of the world tonnage of ships, have ratified the MLC, 2006²¹.

The global maritime recruitment system is an essential part of the global maritime labour market. Manning agencies and crewing companies, either as subsidiaries of ship management companies, or as independent entities, have the main responsibility for the recruitment and placement of seafarers. The MLC, 2006 sets the global minimum standards concerning seafarers' recruitment and placement in Regulation 1.4. The purpose of this regulation is to ensure that seafarers have access to an efficient and well-regulated recruitment and placement system.

In short, Standard A1.4 focuses on the following areas:

- Establishment and definition of public and private RPS;

²¹ Source: ILO FAQs (2015). Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_238010.pdf. In addition, India ratified the MLC, 2006 on October 9, 2015.



- Obligations of ILO Member States where SRPSs are located, concerning the establishment of a system for the operation, supervision and control of SRPS in their territory;
- Obligations of the SRPS (regarding keeping records of qualified seafarers, providing employment, arranging seafarers' placement and informing seafarers of their rights and duties);
- Shipowners' responsibilities (regarding protection of seafarers from being stranded, payment of wages and other obligations);
- Recruitment of seafarers from countries that have not ratified the MLC; and,
- System of protection against monetary loss.

In addition, related topics including the investigation of complaints and relevant social security issues are examined herein.

Goals of this study

In December, 2014 the study on the implementation of labour supplying responsibilities pursuant to the MLC, 2006, within and outside the European Union was awarded by DG-MOVE to Innovative Compliance Europe Ltd and Wismar University of Applied Sciences, Faculty of Maritime Studies, supported by Dr. Progoulaki.

The study goals, defined by the Commission, were to:

- Provide an assessment on how the main EU and non EU seafarers' labour supplying countries having ratified the MLC, 2006 or being in the process of ratifying it are complying, or intend to comply with the requirements laid down in the MLC, 2006 and the new obligations to establish an effective inspection and monitoring system for enforcing labour supplying responsibilities under the MLC, 2006;
- Identify the main policy options which will allow the EU and non EU Flag States to ensure that the most important LSS implement those responsibilities under the MLC, 2006 pertaining to seafarer recruitment and placement, as well as the social security protection of its seafarers; and
- Assess the need or not, of having a European Union legislative framework aimed at ensuring that the most important LSS implement their responsibilities under the MLC, 2006 as pertaining to seafarer recruitment and placement.

4.2. Countries under examination

The study focuses on examining 25 countries, from which 18 are MLC ratifying countries and seven are MLC non-ratifying, while 15 EU member States and 10 non EU-members are analysed. The breakdown of the main Labour Supplying States (LSS) or Flag States (FS) in the EU and outside, according to their status [1 – MLC ratifying; 2 – MLC non-



ratifying; 3 – EU Member State; 4 – non- EU Member State; 5 – Labour Supplying State (LSS); 6 – Flag State (FS)] is depicted in the following table 1.

Table 1 - Countries under examination: MLC ratification and EU Membership Status²²

				MLC, 2006	
		Ratified and in force (18 countries)		Not ratified (7 countries)	
EU	Members (15 countries)	GB ES PL NL LU MT IT GR DE FR DK CY HR BG (14 countries)		RO (1 country)	
	Non Members (10 countries)	RU MA PH MY (4 countries)		TR UA MM ID IN ²³ CN ²⁴ (6 countries)	

The selection of the FS and LSS (targeted States) for the survey was defined in the study specification.

4.3. Data collection

A triangulation of methods (desktop research, personal/ telephone interviews, on-line questionnaire, implementation workshop) and data sources (seafarers and stakeholders groups; FS and LSS competent authorities, public and private SRPS, shipowners' associations and seafarers' trade unions, international organisations, classification societies, PSC and MOUs, NGOs and other) was utilised to support the study.

²² Key: GB: United Kingdom, ES: Spain, PL: Poland, NL: Netherlands, LU: Luxembourg, MT: Malta, IT: Italy, GR: Greece, DE: Germany, FR: France, DK: Denmark, CY: Cyprus, HR: Croatia, BG: Bulgaria, RO: Romania, RU: Russia, MA: Morocco, PH: Philippines, MY: Malaysia, TR: Turkey, UA: Ukraine, MM: Myanmar, ID: Indonesia, IN: India, CN: China.

²³ India has ratified the MLC, 2006 on October 9, 2015 during the final phase of this study. [Source: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_414224/lang--en/index.htm]. India has been treated throughout the study as a non-ratified MLC LSS.

²⁴ China has ratified the MLC, 2006 on September 8, 2015 during the final phase of this study. [Source: <http://www.lloydlist.com/ll/sector/regulation/article468076.ece>]. China has been treated throughout the study as a non-ratified MLC LSS.



More specifically, the following research methods have been used:

Desktop research

The study team created 25 country profiles for the targeted countries that present the following information (among others):

- Category of state (MLC ratifying/ non-ratifying State, EU/ non EU member);
- National maritime labour information (fleet and seagoing labour statistics);
- Contact information of state's competent authorities;
- Comments from ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), if any;
- Results from THETIS, regarding MLC-related deficiencies (crew certificates, working and living conditions, and the four categories of labour conditions) for the period August 20, 2013 (except the countries when implementation started on a later date) to August 20, 2015;
- Status of RPS (public/ private/ job placement websites);
- RPS licensing/certification/ other regulatory system and RPS supervision results;
- Seafarers' insurance, social security and CBAs (if any);
- Other issues (complaint handling procedures and results, cooperation with other countries);
- Special notes and recommendations by the study team;

In addition sources of primary and secondary data were identified.

Stakeholder interviews

In order to support the goals of the study a number of stakeholders' groups were identified and selected stakeholders were approached for interview, based on a structured script and/or semi-structured interviews (personal, telephone and via Skype²⁵ interviews). The stakeholders' groups included representatives of: Flag and Labour Supplying States, seafarers' trade unions, shipowners' associations, classification societies, shipping companies and RPS, Port State Control and MOU authorities, international organisations, non-governmental organisations.

Until September 2015, 70 stakeholders were interviewed, representing more than 60 organisations/firms. A list of all interviewed stakeholders is provided in Annex II.

²⁵ Software application for video and audio calls. Further information: www.skype.com



Survey of seafarers

A comprehensive seafarer web-based survey was prepared in three languages; English, Tagalog and Russian. The online survey was developed using the Survey Monkey application²⁶

A brief summary of the seafarer survey results is provided in section 4.6 and the results of the English and Russian language surveys are provided in detail in Annex IV.

Implementation workshop

A workshop on the implementation of labour supplying responsibilities pursuant to the MLC, 2006 within and outside the EU was organised and took place in Berlin, Germany in June 22-23, 2015. Selected stakeholders were invited, including 45 representatives of competent authorities and Member States of the ILO, shipowners and their associations, seafarers' trade unions, recruitment and placement service providers, maritime authorities, representatives of classification societies, PSC officers and other.

The goal of the workshop was to examine particular issues in alignment with the study's objectives, and provide feedback on the various stakeholders' points of view, as well as to examine and produce suggestions in the EU policy level. The organising of the workshop is compliant to Guideline B1.4.1 §3 of the MLC, 2006, according to which "international cooperation between Members and relevant organisations should be encouraged".

A summary of the discussions during the workshop is provided in section 5.5 and a compendium of the full list of workshop participants, published materials, and information on the participants is included as Annex V.

5. Study Data Analysis

5.1. Ratification of MLC, 2006

EU Member States

Most EU members have ratified the MLC, 2006, following the enactment of Directives 2009/13/EC and 2013/54/EU. More specifically, 21 EU member countries have ratified the MLC. In Ireland the MLC, 2006 came into force on July 21, 2015. The remaining EU members who have not ratified the convention (as of September 2015) are: Austria, Czech Republic, Estonia, Portugal, Romania, Slovakia, and Slovenia. As far as Austria, Czech Republic and Slovakia are concerned, this is most possibly related to the geographic location of the countries and the fact that they have neither a national

²⁶ <https://www.surveymonkey.com>



registry, nor sea ports; as such they do not represent a Flag or Port State, nor an LSS. To the knowledge of the study team, there has not been any official record on the expectation of ratifying the MLC, 2006 in these countries, with the exception of Romania²⁷. Information concerning the ratification of territories such as Guernsey²⁸ that is not part of the UK but a possession of the British Crown, was identified during the survey.

MLC non-ratifying countries outside the EU

China²⁹ ratified the MLC, 2006 on September 8, 2015³⁰, and India²³ ratified the MLC, 2006 on October 9, 2015. Each of these States has been treated and analysed as MLC non-ratifying States throughout this report. There are indications that Indonesia³¹ is in the process of ratifying the MLC, 2006. However, to the knowledge of the study team, there is no official way or record to confirm this for any targeted MLC non-ratifying state, outside the EU.

The ratification process

"One of the obstacles in the universal ratification of the MLC, 2006 in more than 100 States is that there is no 'pick and choose' option, and that there are possible weaknesses in the implementation and enforcement of the Convention", as mentioned by the representative of a competent authority in an EU MLC ratifying FS³². Nevertheless, many ILO Conventions, as the MLC, 2006, seek to take account of national circumstances and provide for some flexibility in the application of Conventions, with a view to gradually improving protection of workers, by taking into account the specific situation in some sectors and the diversity of national circumstances. The MLC, 2005 is considered "firm on rights, flexible on implementation", since the possibility for a State where necessary to

²⁷ Representative from Romanian RPS's e-mail received July 2015, according to which *"the MLC Convention passed through the Romanian Parliament and is on the table of President of Romania to be signed"*.

²⁸ The representative of Nautilus International in the UK pointed out in March 2015 that *"Guernsey [officially the Bailiwick of Guernsey, is a possession of the British Crown in right of Guernsey in the English Channel, off the coast of Normandy]. is a good example of best practice for a country that could not, on its own right, be a signatory party to the MLC, 2006, as it is part of the UK. However the UK approach to licensing of RPS was problematic in view of the number of shipping companies with corporate headquarters in Guernsey."*

²⁹ The MLC, 2006 does not apply to the Hong Kong Special Administrative Region (SAR) and the Macau SAR for the time being, as highlighted by the China's National People's Congress Standing Committee. Source: <http://www.seatrade-maritime.com/news/asia/china-ratifies-maritime-labour-convention.html>

³⁰ Source: http://www.npc.gov.cn/englishnpc/news/Events/2015-08/31/content_1945568.htm. There were earlier indications that the country would ratify the MLC, 2006 by mid-2015 (mentioned by the representative of a Chinese RPS; interview script received in May 2015).

³¹ Indications that Indonesia is in the process of ratifying the MLC, 2006, as per information provided by the Directorate of Marine Safety and Seafarer's Affairs, DGST- Ministry of Transportation, Republic of Indonesia, 13 October 2014. Also online: <http://www.slideshare.net/popeyez/presentation-on-mlc-2006-ratification-progress-in-indonesia>

³² Danish Maritime Authority. Interview in March 2015.



give effect to the detailed requirements of Part A through substantial equivalent (Article VI§§ 3-4) provides flexibility to the ratifying state. Moreover, the possibility to formulate the mandatory requirements in MLC, 2006 Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level (Explanatory Note 9) is also considered an advantageous feature that increases flexibility in the ratification and implementation of the MLC, 2006.

5.2. General CEACR comments

Reporting obligations

According to article 22 of the ILO Constitution, *"each of the ILO Member agrees to make an annual report to the International Labour Office in the measures which it has taken to give effect to the provisions of Conventions to which it is a party"*. The ILO Committee of Experts on the Application of Conventions and Recommendations requested in 2014, the first reports on the national implementation of the MLC, 2006 from the first group of countries (31) for which the Convention entered into force in 2013, of which 22 were received and examined by the Experts. In addition, CEACR requested 34 national reports in 2015 from the remaining ratifying States, from which eight have not been received as of July 31, 2015 (including Croatia and Luxembourg, which are targeted countries of this study). The ILO's Committee of Experts examined these reports including any observations made by workers' and employers' organisations in each country and made specific comments in the form of direct requests to the governments concerned.

The majority of CEACR national reports are not currently available to the public. Due to the number of first national reports that will be requested over the next few years, and the need to provide guidance and to promote a common understanding of the requirements of the MLC, 2006, the Committee decided to publish a general observation on several matters noted in its examination of these first reports (CEACR, 2015b). These Observations are intended to provide guidance to all countries on implementing the MLC, 2006.

The obligation of ILO members to deliver an annual report to the International Labour Office³³ needs to be enhanced. A number of national reports to CEACR regarding the application of the MLC, 2006 are missing. Results from these national reports and feedback from the experts of CEACR provide important guidance to the governments of MLC ratifying and non-ratifying States.

The Committee notes that the MLC, 2006 is still relatively new and the system it has established is still being put into operation. However, the results from the Paris MOU Report, along with the information provided by governments in their reports and the observations by shipowners' and seafarers' organisations, indicates that *"there is a*

³³ As per Article 22 of the ILO Constitution GB.307/10/2 (2010).



significant level of implementation in practice, well beyond the adoption of legislation in many cases, and a high level of engagement by relevant actors in the industry" (CEACR, 2015a, p. 477).

General comments on RPS and social security

On the issue of implementation of requirements under Regulation 1.4 and the Code, that are also tied to obligations under paragraph 5 of Article V, and Regulation 5.3, the Committee has stated: *"where ratifying Members with recruitment and placement services operating in their territory, have not implemented these requirements, it is important to recall that shipowners and Flag State inspectors of other ratifying Members are relying on all ratifying Members to effectively implement these requirements. A failure to move forward on this matter can result in an unfair advantage for a Member that has ratified the MLC, 2006, relative to Members that have not ratified, but whose seafarer recruitment and placement services are required to comply with the Convention's requirements in order for seafarers to be able to obtain employment through these services"*³⁴.

The Committee further observed that a number of countries rely on certification of recruitment and placement services, and in some cases appear to equate ratification of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), with the ratification and implementation of the MLC, 2006. The Committee recalls that *"the MLC, 2006 does not contain exactly the same provisions as Convention No. 179, particularly with respect to the requirements in paragraph 5(b) and (c)(vi) of Standard A1.4 of the MLC, 2006"* (CEACR, 2015a, p. 479).

Regarding social security protection, the CEACR Committee recalled that the obligation is for each Member to take steps according to its national circumstances to provide at least three branches of social security protection to all seafarers ordinarily resident in its territory (Standard A4.5, §2 and 3). It noted that on ratification each Member has specified the branches of social security protection that are provided to seafarers ordinarily resident in its territory (Standard A4.5, §2 and 10). This obligation may be implemented in a number of ways, and the attribution of responsibility may also be the subject of bilateral and multilateral agreements adopted within the framework of a regional economic integration organisation (Standard A4.5, §3, 4 and 7). The Committee has noted that regional arrangements have indeed been made among some Members and that, in some cases, Members may have made bilateral agreements with other countries. However these mechanisms and arrangements do not appear to be widespread and information is not clear on this important issue.

With respect to social security under Regulation 4.5 and the Code, the Committee also noted common difficulties or gaps in implementation, although these may be addressed

³⁴ Source: Keynote Speech of Dr. C. Doumbia-Henry, Workshop dinner, Berlin, June 22 2015, included in section 1 of Annex V – Implementation workshop Materials.



by regional arrangements for EU resident seafarers working on ship flagged in a country that is part of the EU. These difficulties of gaps relate to social security coverage especially for seafarers who are working on foreign flagged ships and who do not have access to social security in their home country³⁴. This issue is further discussed in the section 6 – key study findings.

In the case of the obligations under Regulation 4.5 and the Code, the FS obligations differ and they relate to international cooperation. As the Committee pointed out: *“although the primary obligation rests with the ILO Member States in which the seafarer is ordinarily resident (Standard A4.5, §6 and 7), 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”*.

As noted, this can be provided in different ways, including laws or regulations, in private schemes, in collective bargaining agreements or a combination of these. The Committee observed that in some cases the States’ governments would benefit from technical assistance and cooperation to help move forward on implementation, especially on issues concerning the regulation of any private recruitment and placement services, and fulfilling Port State responsibilities (CEACR, 2015a, p. 479).

Country specific comments

The available country-specific comments from CEACR to the ratifying States’ governments provide a more thorough insight to implications in the MLC, 2006 implementation. CEACR has published until July 2015 specific comments for three of the examined countries: Denmark, Poland and the Philippines. A copy of the detailed CEACR national comments is provided in section 2 of Annex I, while relevant notes are incorporated in the analysis that follows in this chapter.

5.3. PSC and MOU inspections and reports

5.3.1. PSC inspections and results

Obligations of PSC Inspection Officers

Regulation 5.2.1 §3 states *“Inspections in a port shall be carried out by authorised officers in accordance with the provisions of the Code and other applicable international arrangements governing Port State Control inspections in the Member”*. The ILO has provided a handbook of Guidelines for Port State Control officers carrying out inspections under the Maritime Labour Convention, 2006³⁵.

³⁵ Available online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_101787.pdf



During onboard inspections by PSC officers, the respondents to the survey of seafarers indicated that the majority (around 81%) had not been interviewed. Should a PSC officer assess that the DMLC 1 certificate is according to the rules he/she will most probably not interview seafarers or look at other documentation on board. Moreover, as noted by a representative of the EC³⁶, "it may be difficult for PSC inspectors to validate the compliance of an RPS when performing shipboard inspections – this also applies to complex SEA's".

5.3.2. Reports from MOUs

Completed reports

The regional Paris Memorandum of Understanding (Paris MoU) published, in 2015, the first report that includes a list of MLC, 2006 deficiencies that have been identified on board ships, as well as reporting a significant number of detentions of ships for MLC, 2006 related matters in this first year following entry into force of the Convention. No similar reports specifically relating to the implementation of MLC, 2006 have been published from other MOUs or the US Coast Guard during the period of this study. However MLC-related deficiencies are identified and duly noted in the Annual MOU reports of Tokyo MOU, Black Sea MOU, and Indian Ocean MOU. MLC-related deficiencies are found under the following seven categories: crew certificates and documentation; working conditions; living conditions; and four groups of labour conditions (social security; conditions of employment; accommodation, recreational facilities, food and catering; and health protection and medical care). The findings of the reports are presented briefly below, while a thorough analysis is included in section 3 of Annex I.

Recorded MLC-related deficiencies by Paris MoU

During the first 12 months (20 August 2013- 20 August 2014)³⁷ following the MLC, 2006 implementation the Paris MoU inspection results showed that 113 ships were detained for MLC-related deficiencies, representing 17.4% of the total number of detentions (649) under the Paris MoU. During this period 7.4% (3,447) of the total number of 46,798 deficiencies recorded were linked to the MLC, 2006, while 160 (4.6%) were marked as a ground for detention resulting in 113 detained ships. Detainable deficiencies were most frequently recorded in the areas "health and safety and accident prevention" (43.1%), "payment of wages" (39.5%), "manning levels for the ship" (28.6%), "food and catering" (15.4%) and "accommodation" (10%) (Paris MOU, 2014, p.1). The representative of a

³⁶ European Commission, Belgium. Telephone Interview on June 2015. It should be noted that as the PSC Guidelines indicate that the provision of the DMLC I certificate on board is *prima facie* evidence.

³⁷ Only the member States of the Paris MoU which have ratified the MLC on or before 20 August 2012 were entitled to conduct PSC inspections on MLC requirements from 20 August 2013. As a result the following twelve member States started enforcing the MLC, 2006 from 20 August 2013: Bulgaria, Canada, Croatia, Cyprus, Denmark, Latvia, the Netherlands, Norway, Poland, the Russian Federation, Spain and Sweden. During the first year of implementation, the following member States began to enforce MLC, 2006: Belgium, Finland, France, Germany, Greece, Italy, Lithuania, Malta and the United Kingdom, bringing the total to 21 (Paris MOU, 2014, p.1).



classification society³⁸ mentioned that 39.5% of 3477 MLC-related deficiencies recorded by the Paris MoU in the first 12 months of the MLC, 2006 implementation were related to payment of seafarers' wages. With respect to seafarer employment related deficiencies, the Paris MoU identified missing documents, and CBAs or SEAs not in accordance with national requirements.

Other MLC-related deficiencies in Annual MOU Reports

As mentioned earlier, MOUs publish annual reports on deficiencies; the period covered by these reports is from 1st January to 31st December. The 2014 annual report of **Tokyo MOU** on PSC in the Asia-Pacific region mentions that "*an increase has been observed in deficiencies relating to MLC, 2006 and hours of rest stemming from the Concentrated Inspection Campaign (CIC³⁹) of 2014*" (Tokyo MOU, 2014, p.13). In 2014 Tokyo MOU on PSC recorded 8634 in relation to the MLC, 2006 (representing 9.5%). **Indian Ocean MOU** on PSC in its annual 2014 report presented 1595 MLC-related deficiencies in 2014 (representing 9.5% of total deficiencies) (Indian MOU, 2014, p. 22). The **Black Sea MOU** on PSC recorded MLC-related deficiencies that represented 16.3% of the total deficiencies and 8.3% of the detainable deficiencies in the Black Sea region⁴⁰ in 2014 (Black Sea MOU, 2014, p.8).

Concentrated Inspection Campaigns (CIC) on MLC, 2006

A committee meeting of Paris MoU was held during May 18-22, 2015, and attended by members of the Paris MoU, the European Commission, EMSA, Montenegro, observers from the International Labour Organisation, US Coast Guard, Viña del Mar Agreement, Tokyo MOU, Caribbean MOU, Med MoU, Indian Ocean MOU, Abuja MOU and Black Sea MOU. This meeting decided to establish a number of Concentrated Inspection Campaigns (CIC)⁴¹ in 2016 to verify compliance with the MLC, 2006⁴².

5.3.3. THETIS results on the targeted FS and LSS

THETIS is the information system introduced by the European Maritime Safety Agency (EMSA) that supports the New Port State Control Inspection Regime (NIR); it is considered crucial for the implementation of the new regime, which is laid down in the

³⁸ DNV-GL. Personal interview during the European Manning and Training Conference in April 2015.

³⁹ Concentrated inspection campaigns (CIC) focus on specific areas where high levels of deficiencies have been encountered by PSC Officers, or where new convention requirements have recently entered into force, as in the case of the MLC, 2006. Usually, campaigns take place yearly over a period of 3 months (September - November) and are combined with a regular inspection.

⁴⁰ The representative of a seafarers' trade union in an MLC non-ratifying LSS outside the EU noted that there are some "*Problems with PSC inspections for the Black Sea fleet, as too many failures reduce 'success' rates of inspectors, and therefore they avoid inspections*".

⁴¹ <https://www.parismou.org/inspections-risk/inspection-types/concentrated-inspection-campaign>

⁴² <https://www.parismou.org/paris-mou-agreed-inspection-campaign-maritime-labour-convention-2016>



new Directive 2009/16/EC on Port State Control and its four implementing regulations⁴³. The THETIS system⁴⁴ is available online⁴⁵.

An examination of the recorded MLC related deficiencies from inspections was conducted during the period dating from 20 August 2013 (date of the MLC, 2006 implementation or other if latter) until 20 August 2015, and showed that MLC ratifying countries had almost the same percentage of MLC-related deficiencies to total number of inspections as those found in the MLC non-ratifying countries. More specifically, the ratio of MLC-related deficiencies to the total number of deficiencies for the two-year period from the implementation of the MLC, 2006 to 20 August 2015 was 8% in EU MLC-ratifying Member States, 12% in non EU MLC-ratifying Member States, and was 10% in MLC non-ratifying countries outside the EU. There were no records for Romania, which is a EU Member State that has not ratified the MLC, 2006. Additional details are available in section 3 of Annex I.

Within the FS and LSS selected for the study, the highest percentage (33%) was in the case of Indonesia-flagged ships where during three inspections, there was one recorded deficiency. The lowest percentage was recorded in the Philippines, France and Morocco-flagged ships (with zero deficiencies from 28 inspections, 0/26 and 0/5, respectively). Well-known registries, such as Malta and Cyprus, recorded 10% each, while national flags such as Greece, Germany, the UK and Denmark recorded very low percentages (7%, 5%, 5% and 4% respectively). There were no records concerning Romania and Myanmar flagged ships, which is explained by the low fleet size of these countries and the low percentage of these flagged ships to enter ports covered by the Paris MoU, and thus, THETIS. Further analysis regarding the number of THETIS recorded inspections and the MLC, 2006 related deficiencies, in comparison with the fleet size (in number of flagged ships, as published in UNCTAD, 2014) of the selected countries of the study, is available section 3 of Annex I.

⁴³ i.e. (i) Commission Regulation (EU) No 428/2010 implementing Article 14 of Directive 2009/16/EC of the European Parliament and of the Council as regards expanded inspection of ships. (ii) Commission Regulation (EU) No 801/2010 of 13 September 2010 implementing Article 10(3) of Directive 2009/16/EC of the European Parliament and of the Council as regards the flag State criteria. (iii) Commission Regulation (EU) No 802/2010 of 13 September 2010 implementing Article 10(3) and Article 27 of Directive 2009/16/EC of the European Parliament and of the Council as regards company performance amended by (iv) Regulation (EU) 1205/2012 of 14 December 2012.

⁴⁴ The system serves both the EU Community and the wider region of the Paris Memorandum of Understanding on PSC (Paris MOU) that includes Canada, Iceland, Norway and the Russian Federation. It also interfaces with a number of other maritime safety-related databases including those of the EU-recognised classification societies, Community and national information systems and other port State control regimes so as to exchange data and provide a full picture for the inspector.

⁴⁵ <https://portal.emsa.europa.eu/web/thetis>



5.4. Summary results from Country Profiles

Separate country profiles have been developed for the target countries, which include data obtained from desktop research, stakeholders' interviews and other primary and secondary sources. A full set of country profiles, for each of the targeted States is included as Annex III to this report. Also, a series of tables that summarise information concerning the RPS operation, licensing/certification and supervision system contained in the country profiles are included in section 4 of Annex I.

Below is a summary of the key points concerning all 25 of the targeted States⁴⁶:

- (1) **Bulgaria:** [EU, MLC ratifying State] There is one public SRPS and there are 80 licensed private SRPS operating in Bulgaria. A mandatory registration system for private SRPS has been established. Information about the registered SRPS is published on the website of the National Employment Agency. Information on the controlling and supervision of SRPS is not available. Social security branches⁴⁷: 6/9. No CBA for seafarers.
- (2) **China**⁴⁸: [non EU, MLC non ratifying State] Ratified the MLC, 2006 on 8 September 2015⁴⁹. There is one public SRPS and there are 210 private SRPS in China. The China Maritime Safety Administration (MSA) audits each SRPS applicant, issues manning licenses, and conducts annual audits of licensed SRPS. Social security branches: 6/9. Five CBAs for seafarers exist in English, one national and four bilateral.
- (3) **Croatia:** [EU, MLC ratifying State] There is one public RPS and 33 private SRPS operating in Croatia. Licenses issued by the Ministry of Maritime Affairs, Transport and Infrastructure, after prior opinion of a special Committee

⁴⁶ Note: The social security branches indicated by the Member States to the ILO refer to the branches covered to seafarers. However it is unclear from the secondary data, and it was not possible to clarify through interviews with stakeholders if the same branches of social security are offered to shore-based workers. This inconsistency and non-clarity was underlined during the MLC Workshop in Berlin (July 2015) and stressed the need for further research and more detailed examination of the States' compliance to the MLC, 2006.

⁴⁷ Social security branches include the nine branches to be considered with a view to achieving progressively comprehensive social security protection under Reg. 4.5, as per MLC, 2006. At the time of ratification, the protection to be provided by each MLC ratifying State shall include at least three out of nine branches. These include: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit (complementing the protection under Reg. 4.1 on medical care, and under Reg. 4.2 on shipowners' liability).

⁴⁸ The MLC, 2006 does not apply to the Hong Kong Special Administrative Region (SAR) and the Macau SAR. Source: <http://www.seatrade-maritime.com/news/asia/china-ratifies-maritime-labour-convention.html>

⁴⁹ China has ratified the MLC, 2006 at the last stage of this study (September 8, 2015). (Source: <http://www.lloydlist.com/ll/sector/regulation/article468076.ece>). Primary data of the survey showed also indications that the country would ratify the MLC, 2006 until mid-2015 (mentioned by the representative of a Chinese private SRPS; interview script received in May 2015). The country is examined throughout the analysis as a non-ratifying MLC LSS.



comprised of two representatives from the Ministry of Maritime Affairs, Transport and Infrastructure, a representative from the ministry responsible for labour standards, one representative from the shipowners' association and one representative of the seafarers' union. The Croatian Register of Shipping verifies these licenses. Social security branches: 9/9. Two CBAs for Croatian national crew are in place between Seafarers' Union of Croatia and Maritimae Regionis D.D.O., available in English and Croatian. The majority of private SRPS use ITF approved CBAs. Also, a bilateral agreement exists between a shipping firm and the seafarers' trade union.

- (4) **Cyprus:** [EU, MLC ratifying State] Three public SRPS are regulated in Cyprus for the employment of national seafarers. Around 183 private SRPS operate but mainly for the recruitment and placement of foreign seafarers (as branch offices of foreign/international SRPS). There is no official list of private SRPS, and no regulatory framework for licensing/ certification or monitoring/ supervision of private SRPS has been implemented. A Government Notice has been published to raise awareness amongst seafarers of the MLC, 2006 and how this will impact on seafarers' working lives. Social security branches: 4/9. There is one CBA only for national seafarers working on national-flagged ships applied on a voluntary basis, available in English and Greek.
- (5) **Denmark:** [EU, MLC ratifying State] There is no public RPS in Denmark. There are four private SRPS are certified by the Danish Maritime Authority based on a certification fee (certificate is valid for 5 years). List of certified SRPS available online. Monitoring and supervision of SRPS based on a risk-based approach; this approach is in dispute. There has been no consultation with shipowners' and seafarers' organisations with respect to the system for certification of SRPS operations. ILO's CEACR comments focus on the definition of seafarer, SEA clauses (annual leave, repatriation, and other), medical care on-board and ashore, social security, collective bargaining and the SRPS licensing and monitoring system. Social security branches: 4/9. All seafarers (irrespective of nationality) on Danish ships are covered by the act on industrial insurance. Collective bargaining agreements apply only, if so agreed in the seafarers' employment agreement (SEA). No national CBA for Danish seafarers.
- (6) **France:** [EU, MLC ratifying State] The study team was not able to verify the number of public and/or private SRPS, nor could we find evidence that a licensing/ certification and monitoring/ supervision system is in place. Available information on the website of the competent authority shows existence of various CBAs for maritime-related professions, however information is only available in French, and most documentation is not



available online. The procedures for the handling of, and reporting on, seafarers' complaints could not be verified. Social security branches: 9/9.

- (7) **Germany:** [EU, MLC ratifying State] In Germany there is one public SRPS and there are 66 private SRPS, all having websites. There is a centrally regulated system of recruiting and placing seafarers. All private SRPS in Germany must be approved by the Ship Safety Division of BG Verkehr and the names of the approved SRPS are published on the official website of the authority. No website for seafarer employment or RPS is allowed to operate in the territory, unless it is approved by an appropriate authority. Seafarers under the German flag benefit from the public German social security system. A comprehensive accident insurance covers all crewmembers, regardless of their nationality. In case of accidents at the shipboard workplace the "Berufsgenossenschaft" (accident prevention and insurance association) provides support and takes care to restore a seafarer's fitness for work. The seafarer's special fund "Seemannskasse" is a unique institution providing an additional pension for elderly seafarers. Social security branches: 4/9. Two CBAs for seafarers applied on a voluntary basis; it is unknown if they are available in English.
- (8) **Greece:** [EU, MLC ratifying State] A central public regulated system exists for the recruitment and placement of Greek seafarers. One single public SRPS is in operation. Unofficially private SRPS operate in the territory for the recruitment and placement of foreign seafarers on Greek owned ships, acting as branch offices of foreign SRPS. No official regulatory, or monitoring system is in place for these entities. Websites would appear to exist and operate, based on unofficial sources, but they are not recognised as SRPS, under the MLC, 2006 definition. Social security branches: 9/9. There are seven CBAs in place; one national CBA for Greek seafarers working on Greek-flagged ships (not officially available in English) and 6 CBAs for Greek seafarers working on different types of FOC-flagged ships (two are officially available in English).
- (9) **India:** [Non EU, MLC non ratifying State] India ratified the MLC, 2006 on 9 October 2015⁵⁰. There are two public RPS and 339 private SRPS with valid licenses by the Directorate General of Shipping; a list of licensed private SRPS is available online. It appears that the SRPS are supervised regularly, but no relevant results are available. Seafarers' complaints handling mechanism is established, but no results are published. Various social security benefits are in

⁵⁰ India ratified the MLC, 2006 during the final phase of this study (October 9, 2015). India is considered as the 67th ratifying State by the ILO. (Source: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_414224/lang--en/index.htm). The country is examined throughout the analysis as a non-ratifying MLC LSS.



place, but not as required under MLC, 2006. There is one CBA for seafarers', available in English.

- (10) **Indonesia:** [Non EU, MLC non ratifying State] No official information could be found on SRPS (unofficial sources indicate 34 private SRPS), regulatory framework for the licensing, operation and supervision of SRPS. No information on the handling of seafarers' complaints. There is no official information on social security. Social security branches: unknown. It is not known if there is in place a CBA for seafarers.
- (11) **Italy:** [EU, MLC ratifying State] There is one public SRPS that has 28 sub offices that are linked to the port offices of the Coast Guard. No substantive information was found describing a regulatory scheme concerning private SRPS in the territory. Indications from unofficial sources show that private RPS in Italy are required to obtain approval from the Italian Ministry of Transport. Relevant information is only available in Italian. No information was available on the monitoring/ supervision of SRPS and the relevant reporting and results. IN addition, no information was found regarding the handling of seafarers' complaints. Social security branches: 8/9. It is unknown if there is a CBA for seafarers.
- (12) **Luxembourg:** [EU, MLC ratifying State] No public and/or private services for the recruitment and/or placement of seafarers were identified in the Grand-Duchy of Luxembourg. We found no information on the handling of seafarers' complaints. Information on bilateral/ multilateral labour or social security or other agreements was not identified. Social security branches: 9/9. No CBA for seafarers was found.
- (13) **Malaysia:** [Non EU, MLC ratifying State] It is unknown if a public SRPS exists, while four SRPS (and three websites) are included in an official online source. Manning agents based in Malaysia are required to obtain a license from the Marine Department of Malaysia. There was no information on the monitoring and supervision of SRPS operations, nor on the handling of seafarers' complaints. Shipowners must ensure that the dependants of the Malaysian seafarers will also be covered by the social security protection enjoyed by the seafarers concerned. Otherwise the owner is liable to a fine or imprisonment. Social security branches: 3/9. One CBA for seafarers applied on a voluntary basis.
- (14) **Malta:** [EU, MLC ratifying State] There was no official information available on the existence of public or private RPS for seafarers. Unofficial sources indicated 20 private SRPS, but there were no official lists of these entities. No information was available on the supervision of SRPS, nor on the handling of seafarers' complaints. Social security branches: 3/9. It is unknown if there is a



CBA in place for seafarers, but collective bargaining agreements apply only, if so provided for in employment agreements.

- (15) **Morocco:** [Non EU, MLC ratifying State] There is one public RPS in Morocco and an unknown number of private SRPS. The approval of SRPS is the responsibility of the Ministry of Employment. The Merchant Shipping Directorate, operating in close collaboration with the inspectors of the Ministry of Employment's Labour Inspectorate, performs supervision of recruitment services. A list of all authorised private recruitment agencies in Morocco is published on the official website of the Ministry of Employment and Social Affairs, but this is not specific to seafarers' RPS. Social security branches: 3/9. There is one CBA for seafarers, applied on a voluntary basis; unknown if available in English.
- (16) **Myanmar:** [Non EU, MLC non ratifying State] A system for the licensing of SRPS in Myanmar was launched on April 1, 2014, under the supervision of the Department of Marine Administration (DMA) of the Ministry of Transport (MOT), in accordance with the DMA Notification No. 3/2013. The licensing of SRPS is mandatory. The Seamen's' Employment Control Division is responsible for the recruitment of national seafarers to foreign-flagged vessels, and for the licensing and supervision of private SRPS. Public RPS can operate in Myanmar, but there are none at present. Currently out of 163 private RPS, some 53 have been certified by an RO on a voluntary basis. No official information is available on the handling of seafarers' complaints. Social security branches covered: 4/9. One Myanmar CBA for seafarers has been issued by a Tripartite Committee; unknown if available in English
- (17) **Netherlands:** [EU, MLC ratifying State] In the Netherlands, SRPS compliance with MLC, 2006 is based on RO verifications. All private employment agencies need to be registered in the Trade Register of the Chamber of Commerce, however no exact number of private SRPS is available. Also there is no official list of SRPS in the Netherlands provided by the government. There is one public RPS, which is not specific to seafarers. The Ministry for Employment and Social Affairs has set up a special inspection team to combat unscrupulous temporary work agencies; no relevant results are available, neither related nor un-related to seafarers' complaints. Social security branches: 8/9. Two or more CBAs for seafarers exist; it is unknown if these are available in English. Collective bargaining agreements apply only, if so agreed in the employment agreement. The Dutch labour law does not require any employer/ shipowner to apply collective bargaining agreements to employees on board Dutch-flagged ships.
- (18) **Philippines:** [Non EU, MLC ratifying State] There are currently 405 Philippines manning agencies, with valid licenses. The Philippines regulatory



framework requires mandatory RPS licensing and supervision. A list of licensed SRPS published online by Philippines Overseas Employment Administration (POEA), one of the three competent authorities. There is a strict SRPS licensing system in place requiring specific documentation to be submitted to the authorities prior to the establishment of a SRPS. Social security branches: 8/9. One CBA is in place with standard terms and conditions for overseas Filipino seafarers on-board foreign ships. 43 bilateral labour agreements for seafarers, available in English.

- (19) **Poland:** [EU, MLC ratifying State] The government of Poland is in the process of developing new legislation to reflect the MLC, 2006 requirements with respect to any fees that seafarers can be expected to pay, as well as the insurance requirements. In the interim, national legislation remains the applicable text, which is not fully aligned to the MLC, 2006 requirements. 562 public RPS and 67 private RPS seem to exist, but only 47 private SRPS have approved certificate from the national administration. List of certified SRPS available online. Registration of RPS to the Ministry of Economy and Labour is on a voluntary basis; from January 1, 2016 licensing will become mandatory. Polish Register of Shipping and other classification societies offer certification, but they have not been authorised to act as ROs and certify SRPS regarding MLC, 2006 and Reg. 1.4. Supervision the responsibility (annual reviews) of the Directorate of Maritime Offices, but supervision data is not published. Social security branches: 8/9. One bilateral CBA for seafarers with Norway; unknown if available in English, but no national CBA. Generally low level of collective bargaining for seafarers.
- (20) **Romania:** [EU, MLC non ratifying State] The SRPS license is issued by the Romanian Naval Authority and is valid for five years, provided annual reconfirmation. Social security branches: 5/9. There are ITF agreements, but Romanian CBA is pending. No information on seafarers' complaints, or for cooperation with other countries. No supervision data available.
- (21) **Russia:** [Non EU, MLC ratifying State] Only private SRPS operate in Russia, but there is no official total number. Some lists are available online from official sources, indicating around 390 RPS. RPS licensing is mandatory and issued by the FMS (governmental Federal Migration Service). Additionally, private RPS can be certified by the Ministry of Transport's Autonomous non-profit organisation "Centre for Coordination and certification services for the recruitment and employment of seafarers on ships under foreign flag" (ANO CFB) on voluntary basis. ISO certification is also issued on a voluntary basis by large-sized, international SRPS. There is a system to register individual seafarers contract in the Ministry of Transport. SRPS are inspected once every 2-3 years or upon the request of the public prosecutor. In case the Union of



Seafarers is involved in unscheduled inspection, relevant inspection results are published. No results from monitoring the operation of private RPS are available by governmental sources, neither any concerning seafarers' complaints handling. Social security branches: 8/9. There is a CBA for Russian seafarers, applied on a voluntary basis, available in English. Russian seafarers can be covered under the CBA of the Seafarers Union of Russia, Union of Water transport workers, or any other Unions, while ITF CBAs are in use. Other CBAs may be developed between employees and employer, as in the case of the bilateral agreement between the Seafarers' Union of Russia and the Norwegian Shipowners' Association.

- (22) **Spain:** [EU, MLC ratifying State] The licensing of SRPS in Spain is regulated under Law No. 35/2010 of 17 September 2010, Royal Decree No. 1796/2010 of 30 December 2010 and Royal Legislative Decree No. 3/2012 of 10 February 2012. These regulatory instruments recognise the action of private intermediaries in the placement of workers. Private employment agencies must have been granted authorisation and must provide services free of charge to workers. For jobseekers to be eligible, they must be registered with the public employment services. Persons who register as jobseekers are informed by the public employment services about authorised employment agencies that operate in the country. One public SRPS exists, and there is no official register of private SRPS. No information was available on the handling of seafarers' complaints, nor on reporting thereto. Social security branches: 4/9. The existence of a CBA for seafarers was not established.
- (23) **Turkey:** [Non EU, MLC non ratifying State] There is one public RPS in Turkey, no published number or list of private SRPSs. Unofficial sources indicate 183 crewing companies and SRPS. A private RPS must apply to ISKUR (public RPS) to receive approval to operate. ISKUR authorises only SRPS that offer permanent employment; thus, the entities in the maritime sector and SRPS that offer seafarers' employment for a defined and limited periods are legally banned. Certification is on a voluntary basis by ROs. A Turkish Maritime Centre of Excellence is planned to increase maritime safety and to meet EU criteria in terms of, inter alia, the employment opportunities for Turkish seafarers. Social security branches: 7/9. No national CBA for seafarers, but a CBA may be signed between a company and the seafarers' union. ITF CBAs are in use.
- (24) **Ukraine:** [Non EU, MLC non ratifying State] There is one public RPS and many private SRPS (unofficial sources indicate 77) operating in the Ukraine. No official detailed information is available on the SRPS regulatory framework, and on the operation and supervision thereof. Social security branches: 4/9.



One CBA exists for seafarers applied on a voluntary basis, it is unknown if this is available in English.

- (25) **UK:** [EU, MLC ratifying State] There are no public SRPS in the UK. Around 80 private SRPS exist, of which not all are considered RPS as the MLC, 2006 definition states; thus not all are subject to licensing. Licensing is on a voluntary basis. Two entities exist: Employment Agencies and Employment Businesses with different licensing obligations. A Government Notice has been published to raise awareness amongst seafarers to the MLC, 2006 and how this will impact on seafarers' working lives. The UK has also issued guidance for the employment of seafarers from MLC non-ratifying States. Social security branches: 8/9. A CBA for UK seafarers has been negotiated by ITF, with input from Nautilus International.

Table 4 in section 4 of Annex I provides a summary of results concerning the social security branches covered by the national social security system of the targeted countries⁵¹.

It is important to note that, during the implementation workshop inconsistencies were identified regarding the stated social security branches by MLC ratifying States. This was also identified in the CEACR comments on the published national reports. In the case of Germany there is a different number of social security branches covered for nationals working on national flagged ships, and a different number for foreigners working on national flagged ships. The ILO representative stressed the importance of all Member States to provide correct and updated information to the ILO. Thus, the information in the table has to be viewed with caution, because it is unclear if the covered social security branches apply to all citizens, to national seafarers who work on national flagged ships or seafarers who work on ships flying any flag.

Table 5 in Annex I presents summary results concerning the CBAs in the targeted countries. It is important to note that the status of CBAs varies among the targeted countries, as well as internationally. The interviewed stakeholders mentioned that in some cases the CBA concerning nationals employed on national-flagged ships is "obligatory". This would imply that the enforcement of CBA's is equivalent to the power of a national law. According to the fundamental principles of collective bargaining, it is up to the social partners whether they enter into negotiations and they conclude a CBA. That CBA can be at company level, by sector or of general applicability. Further discussion on this topic follows in section 6.3 of this report.

⁵¹ Data presented in the table stems from ILO official website; individual country information submitted to the ILO.



5.5. Summary results from Implementation Workshop

The following summarises the findings from the workshop. These are discussed in more detail in section 5 of Annex I.

- Different States have different interpretations of the definition of '**seafarer**'⁵². A few delegates mentioned that they consider a uniform definition of seafarers should be applied, and cadets should have the same status everywhere.
- MLC, 2006 regulations are incorporated into national legislation of the countries, but there is **flexibility** in the interpretation and the implementation in national level; this can create differences and misunderstandings.
- There are variations between **service providers** involved in the recruitment and/or placement of seafarers (website or physical presence) and the nature of the provided services.
- Participants expressed the desire to access a **list of all** licensed, certified, or otherwise regulated SRPS. However, delegates mentioned that it is difficult to create such a published list of RPS, especially taking into account the lack of harmonisation, as in different countries different standards apply.
- It was highlighted by most of the delegates that no new regulations or standards are required; what is required is additional **enforcement** resources.
- Although licensing should be a prerequisite for SRPS, there should also be more focus on **auditing and supervision**.
- **SRPS operational costs** and workloads have increased under MLC, 2006, especially for smaller SRPS that do not have established quality standards; and, the costs of certification are onerous in terms of implementing the required quality standards.
- SRPS, i.e. manning agencies and crewing companies are not eligible to enter P&I clubs, but since RPS are responsible for unpaid wages and for other third party obligations according the MLC, 2006 **private or other insurance cover** is required for the SRPS.
- Issues relating to the remittance of social contribution payments into **different social security systems** worldwide were discussed, with special concerns relating to pension funds (and in relation to the "old-age" benefit mentioned in

⁵² The MLC, 2006 provides a definition of the seafarer (Article II §1f). In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of the Convention, the question shall be determined by the competent authority in each Member, after consultation with the shipowners' and seafarers' organisations concerned with this question. The relevant ILO Resolution VII concerning information on occupational groups (pp.4-6) is available online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088130.pdf



Standard A4.5, MLC, 2006⁵³). Special emphasis was placed on the need for bilateral/ multilateral agreements on social security benefits.

- In the context of the EU rules on the coordination of social security, a problem was signalled with the **A1 forms**⁵⁴, which either were not being provided by the competent national social security organisation, or were provided after excessive delays, often after expiry of the SEA⁵⁵.
- Differences were identified in the **period of employment**, whether it could be extended, and if the contracts included a month of holidays within the 12 months, or after it. The ILO commented that agreement on the **termination** is not needed, since contracts can be entered into for indefinite periods. In terms of **annual leave**, seafarers cannot work for more than 12 months without holidays, to address the problem of fatigue. The MLC, 2006 sets the standard for the seafarer's entitlement to leave, which starts to count from the start of the employment contract.
- The need for **confidentiality** in the implementation of complaints procedures was highlighted. The most frequently recorded complaints related to unpaid wages, as well as non-payment or partial payment of repatriation.
- It was repeatedly emphasised that seafarers should know **which RPS** are certified/ licensed/ otherwise regulated and should be aware of the importance of using certified/licensed/regulated agencies.
- Seafarers should receive **training on their rights and obligations** under the MLC, 2006 before signing on board; and, that this should be provided by the SRPS, by trade unions and/or other relevant parties. Seafarers could be educated in marine schools as how to search for certified SRPS, and with regard to their rights and duties stemming from the MLC, 2006.
- Procedures for MLC, 2006 **PSC inspections** require to be further clarified. PSC officials must avoid disadvantaging seafarers' and there should be a stronger focus on PSC authorities to train more specialised PSC officers.
- **Capacity building** for PSC authorities in both ratifying and non-ratifying States relating specifically to Regulation 1.4 of MLC, 2006 was stressed.

⁵³ This point was raised especially for the case of Turkey, due to a general change in the national social security and pension system.

⁵⁴ A1 Form: Statements proving that seafarers pay their social contributions in another EU country, in case the worker is a posted one or works in several countries at the same time. Further information: http://europa.eu/youreurope/citizens/work/social-security-forms/index_en.htm

⁵⁵ Further information: http://europa.eu/youreurope/citizens/work/social-security-forms/index_en.htm



- The European Commission should consider some form of higher-level “**seal of approval**” (white list) for SRPS’s that achieve this standard, which would be recognised world wide and not dependent on the work of State authorities.
- The European Commission should push the EU Flag States to publish more comprehensive **annual reports** that include details of the SRPS they have certified, the certification process, and the violations that they have identified.
- Suggestions were voiced for a ‘**shame and blame**’ approach to be applied to substandard SRPS.

5.6. Summary results from Seafarer Survey

Herein a summary of the seafarer survey results is presented. Detailed analysis is included in Annex IV⁵⁶.

- The majority of seafarers were hired in their current position directly by the shipping company or through an RPS, each accounting for almost 38% of the responses, with some 14% being recruited through a ship management company (**employment pathway**).
- 40% of the respondents are not aware if the RPS that they are using is State licensed (**awareness of RPS licensing/certification status**).
- 5.2 % of respondents reported that they were charged a fee by the RPS they used (**charged fees**).
- 50% of respondents did register with a web-board Internet service; 7.6% of the seafarers using web-based services were charged a fee (**use of web job-boards**).
- 43% of all respondents were contacted by a prospective employer as the result of having posted their CV’s on web job-board services (**employment through web job-boards**).
- Around 10% of the respondents who answered questions relating to their contracts of employment (around 303 seafarers) reported not having a signed original copy of their SEA (**original signed SEA**).
- 60% of the above seafarers are covered by CBAs (but no information on the form; i.e. national or ITF or bilateral/ multilateral) (**use of CBA**).

⁵⁶ A total of 519 seafarers responded to a web-based seafarer survey in English and Russian. Of these 303 completed the survey in full. The questions that were not fully answered by 216 respondents related to contracts and terms of employment.



- 27% of the respondents providing information on their contracts of employment claim not to have been given a chance to examine and seek advice on their SEA before signing on (**advice before signing SEA**).
- More than eight out of every 10 the respondents answering questions relating to their contract of employments confirmed that their contracts had been explained to them; most frequently, by the manning agent (**RPS role in SEA explanation**).
- A large number of the seafarers answering questions relating to contracts of employment indicated that significant elements required by MLC, 2006 are missing from their employment agreements (**content of SEA**).
- Around 20% of these respondents admitted that the period of notice for early termination they are required to give is different from what the shipowner is required to give (**period of notice for early termination**).
- Shipowners and ship management companies are in the lead in the payment of wages to seafarers. Only 6.15% of the respondents answering employment contract questions claimed that wages were not paid according to the scale in their seafarer agreement (**payment of wages**).
- 15.5% of the respondents answering employment contract questions claimed that they have contracts lasting more than 12 months (**length of contract**).
- 25% of the small number of respondents (135) who answered this question claimed that they were not repaid in full for repatriation at the end of their contracts (**repatriation cost**).
- Only 50% of respondents answered a question on basic social security cover, and 10% of these claimed that they do not enjoy basic cover (**social security**).
- 35% of 284 respondents were unaware if they were entitled to compensation for ship's loss or foundering, with 34% claiming that they are not entitled to such compensation (**compensation for ship's loss/ foundering**).
- About 10% of respondents reported not having been allowed to bring family and partner on board and about the same percentage claimed being refused possibility of extended visits for partners (**partners/ visitors on-board**).
- Slightly less than 60% of respondents answered the questions relating to complaints procedures. About 25% of those who responded do not have contact details of competent authorities in their country, nor the flag state, nor port state authorities (**complaints**).
- 20% of 287 respondents believed that blacklists exist; about 3.5% of these respondents reported having been personally blacklisted, 13% of who said that have been notified of this by an RPS (**blacklisting**).



- **Seafarers' overall experience since 20th August 2013** (implementation date of the MLC, 2006). 262 respondents answered this question indicating that: (a) the majority of respondents somewhat agree⁵⁷ that the social and employment situation has been improved after August 2013 (followed equal percentages of respondents indicating full agreement and disagreement); (b) the majority somewhat agree that the SRPS are considered to generally well represent the seafarer's interests; (c) the vast majority agree that the SEA is clear, understandable, fair and ensures all rights; and, (d) the majority somewhat agree that actions are promptly taken to address seafarers' complaints.

5.7. Summary results from surveys of shipping companies and SRPS

With the use of structured interview scripts the survey team approached a number of shipping companies, shipowners' associations and SRPS for the collection of data, in order to cross-check information provided by other stakeholders, including authorities of registries. There was a limited sample collected mainly with the assistance of the UK Chamber of Shipping. In total seven shipping companies, three SRPS and eight shipowners' associations⁵⁸ participated in this survey⁵⁹. Findings showed that:

- Most shipping companies operating globally **employ many different nationalities** on-board their ships, coming from various MLC ratifying and non-ratifying LSS.
- Shipping companies collaborate with **SRPS who have been certified by an RO**, whether this is a requirement in the SRPS's territory or not. In the cases of SRPS in countries where there is a particular licensing system all requirements are covered.
- Some shipping companies **inspect the SRPS** in all territories (privately or in collaboration with an independent party, e.g. consulting firm or RO).
- Shipping companies do not seem to benefit from **changing flags** of their vessels to MLC non-ratifying FS, as such are subject to MLC inspection too.
- **Social security branches and insurance** are covered in many cases through a combination of SEA, CBA, P&I cover, private insurance paid by the shipping company and self-paid by the seafarer.

⁵⁷ In a four-level scale, starting from "very much agree", "somewhat agree", "do not agree" and "strongly disagree".

⁵⁸ The European Community Shipowners' Associations (ECSA) and the German, Greek, Danish, Norwegian, Portuguese, Dutch and Swedish Shipowners' Associations.

⁵⁹ Other stakeholders representing the above-mentioned groups participated in the study's workshop; input from workshop delegates representing private RPS, shipowners' and crewing agencies' associations are included in the workshop findings.



- Minor cases of **seafarers' complaints** concerning late payment of wages due to problematic SRPS services; complaints have been resolved directly by the shipping companies.
- Minor cases of **MLC-related deficiencies** on ships operated by the companies of the sample. In one case deficiency was found wrong and has been cancelled. No further information available.
- Several cases of **SRPS being branches of shipping companies**; this practice is considered a safe way to employ seafarers by avoiding the use of less trusted individual private SRPS. Also **public SRPS** are in use in some countries where they exist.
- **SRPS experience difficulties** in providing financial cover for seafarers' insurance as required by the MLC, 2006.
- **Websites** offering services to seafarers are interested and willing to know whether they are under the MLC, 2006 SRPS definition and request further information concerning licensing/ certification.

5.8. Recommendations from stakeholders

Addressing the aims of the study, findings led to the following suggestions by the various stakeholders involved. Herein briefly presented:

- (1) EU countries need to provide web sites with lists of certified RPS for their country;
- (2) The EU could consider some form of higher level "seal of approval" (white list) world wide of RPS's that achieve this standard, which would be a world wide "seal" (as is done for equipment suppliers) and not dependent on the work of ratifying on non, State authorities;
- (3) The EC could push for annual reports of (EU) Flag States to be comprehensive and to include details of the RPS they have certified, the certification process, and all violations that they have found, in order to explain the "sufficient" and "equivalent" interpretations of Reg. 1.4;
- (4) A 'shame and blame' approach could be adopted to substandard RPS;
- (5) A formal (standard) agreement between the RPS and the seafarer describing seafarer rights and RPS obligations, which shall have power of attorney.
- (6) Seafarers' awareness on their rights and duties stemming from the MLC, 2006 in general, as well as specifically to Regulation 1.4 needs to be raised. Seafarers have to be educated as to where to look for RPSs' certification/ license in order to ensure they are using a valid and trustworthy RPS;



- (7) Specific “best practices” relating to the implementation of Reg. 1.4 applicable in one state, may not be appropriate in all States. Retaining the flexibility of MLC, 2006 implementation in the national level is vital. However implementation of the MLC, 2006 needs to be enhanced at all levels.

6. Key study findings

In this section of the report a summary of the study findings relating to the specific topics that were defined as relevant to the objectives of the study is presented. This section includes a synthesis of the findings from all project activities. Additional background to the findings can be found in section 7 of Annex I.

The findings of the study can be summarised in the following four areas:

- i. The awareness of seafarers’ of their rights as defined in MLC, 2006 and the obligations of the maritime stakeholders to protect these rights;
- ii. The definition, regulation and operation of SRPS;
- iii. The supervision and inspection of SRPS and the recording and processing of complaints against SRPS; and
- iv. The provision of CBAs, and of social security and insurance cover for seafarers’.

6.1. Seafarers’ awareness of MLC, 2006

The seafarers’ survey indicated that more than 40% of the respondents are not aware if the RPSs that they are using are state licensed or certified. Seafarers are not qualified or able to determine if a manning agent is certified or if it has been audited by a third party and whether or not is reputable. They are also not able to read the MLC, 2006 requirements for accreditation of RPS, nor understand how different countries handle the certification and supervision of SRPS.

In order to raise the level of seafarers’ awareness, the role of training the seafarers on their rights and obligations under the MLC, 2006 is crucial. In the Philippines for instance, the RPS have the responsibility for a pre-departure orientation programme for seafarers, and the RPS issues a document that the seafarer has undergone training before boarding a ship. It is unclear though if this practice is obligatory by law. This approach may be used in the EU, although the conditions among the European countries are very different. Also, ITF internationally, ETF in Europe and the national trade unions, where such exist, could play a role in awareness raising of seafarers in terms of their rights and obligations under the MLC, 2006.



In all events, such training needs to be provided before seafarers sign on-board, most probably by the RPS or alternatively by trade unions, or at an earlier stage, by educational institutions (marine academies or other). Once on-board seafarers most often do not have the time to undergo MLC, 2006 training. The subject of training costs is however a challenge. Whether the seafarer should incur this cost, and if seafarers should receive wages during any on-shore training period are open questions.

6.2. The definition, regulation and operation of SRPS

6.2.1. Interpretation of key definitions

Interviews with stakeholders and additional feedback collected during the workshop revealed that there is a lack of clear definitions in the MLC, 2006, affecting the level of interpretation and thus, the implementation of the MLC, 2006 standards. As noted by several stakeholders, the vagueness of key terms defined in the MLC, 2006 is a problem, however the Convention would not have been ratified if an attempt had been made to standardise the meaning of many concepts. The key definitions that seem unclear in practice include:

- **The seafarer:**

While MLC, 2006 covers all workers, including staff employed on cruise ships (e.g. bar staff, casino personnel, etc.); certain categories of entertainers (e.g. well-known singers and models) represent unclear cases for which national provisions are needed. Similarly, repair crews are also an unclear case for which a determination is needed. The inclusion of cadets under the definition of the seafarer needs clarification at the national level (e.g. Panama considers them trainees, not seafarers). The Danish Government indicated that although it appears that masters are not considered seafarers, they are covered by a special provision giving them a special status; this does not prevent them from having the same protection and rights as other seafarers.

- **The shipowner:**

The contracting party of the seafarer's SEA may be different from the ship owner, in the case of SRPS acting on behalf of the shipowner, or the rare cases of bareboat chartering. The most common discrepancy found is in respect to the information in the SEA and in particular the recording of the name of the MLC shipowner. This is required to establish the link between the SRPS and that entity. Trade unions want to force RPS to take on the liabilities of shipowners relating to seafarers' employment agreements, where the RPS is acting as a crew manager. The RPS claims, on the other hand, that it only signs the SEA on behalf of the shipowner, and therefore should not be liable for the failure of the shipowner to adhere to the terms of employment of the SEA (e.g. repatriation, bankruptcy etc.).



- **The RPS:**

SRPS can operate under different schemes, including independent manning agencies, crewing companies, ship management companies, branches of shipping companies and web job-boards. Workshop participants proposed that the definition should be based on the characteristics/ function of the services provided rather than the form (website or physical presence). Thus, if the organisation provided information only about seafarers (i.e. lists of CV's) it was not considered as an RPS; if the organisation used this information to provide a list of suitable candidates to a prospective employer based on some explicit criteria provided by the employer, it would be considered to be operating as an RPS. In the case of the UK for instance, the RPS are divided to "employment businesses" and "employment agencies", both considered under the MLC, 2006 RPS definition, but with different licensing obligations. Further, in Cyprus there are companies providing information and selection services for seafarers that are not resident in Cyprus (i.e. foreign crews) and these are not certified as RPS in Cyprus.

The representative of the Cyprus FS mentioned the suggestion that these entities should be certified in the state of origin, meaning by the country authorities whose seafarers they select. In general, the differing interpretations of the RPS definition found in practice may result in different understandings by the seafarers of the legality and the fulfillment of MLC, 2006 obligations by RPS they are working with. Also, differing interpretations by the FS and LSS may impact the RPS licensing/certification or other regulatory system implemented.

6.2.2. RPS Regulation

Public/ Private RPS schemes

The MLC, 2006 applies to both public and private forms of seafarers' recruitment and placement service providers. While public RPS may co-exist with private RPS, the MLC, 2006 has introduced specific standards concerning the operation and supervision of the private RPS. Also, in the MLC, 2006 there is a statement that: "*undue proliferation of private seafarer recruitment and placement services shall not be encouraged*" (Standard A1.4 §2). A representative of classification society noted that the number of RPS in some countries seems very large, and proposed that "*there should be a way to regulate the number of RPS*". However, directly limiting the number of RPS would be against free competition, as well as against the freedom to provide services and freedom of establishment, especially within the EU.

Public SRPS are operational in nine out of the 15 selected EU member countries who have ratified the MLC (Bulgaria, Italy, Croatia, Cyprus, Germany, Netherlands, Poland, Spain and Greece).



There is no public SRPS in Romania (EU member, MLC non ratifying country).

Within the four selected countries outside the EU that have ratified the MLC, 2006, there are two countries that operate a public RPS (i.e. Russia and Morocco, however the latter is not specific to seafarers).

Within the selected countries outside the EU that have not ratified the MLC, 2006, the majority of these (4/6) operate public SRPS (i.e. China, Turkey, Ukraine and India).

In six MLC ratifying and EU countries there is a **combination of both a public and private RPS** (i.e. Bulgaria, Croatia, Germany, and unofficially in Poland, Spain and the Netherlands). In two EU members and MLC ratifying States, (Denmark and the UK⁶⁰) only private RPS is in operation. In the other two (Cyprus and Greece) only public SRPS handle the recruitment and placement of national seafarers. Also, in Poland the number of public RPS (i.e. 562)⁶¹ is higher than the number of private RPS (67)⁶².

Within the States outside the EU that have ratified the MLC, 2006, Russia operates public SRPS (1) and private SRPS (391), Malaysia operates four private RPS, and the Philippines operate the highest number of private SRPS (403).

Among the States outside the EU who have not ratified the MLC, 2006, China, India Myanmar, Turkey and Ukraine operate both public and numerous private RPS.

Table 2 - Number of Public and Private SRPS in the targeted countries

	Public	Private	Combination
EU MLC	Bulgaria (1); Italy (1); Croatia (1); Cyprus (3); Denmark (0); France (unknown); Germany (1); Greece (1); Luxembourg (0); Malta (unknown); Netherlands (1); Poland (562); Spain (1); UK (0)	Bulgaria (80); Italy (unknown); Croatia (33 unof.); Cyprus (0, but 132 unof. as branches of foreign SRPS for foreign crew); Denmark (4); France (unknown); Germany (66); Greece (0, many exist as branches of foreign SRPS); Luxembourg (0); Malta (20 unof.); Netherlands (6 unof.); Poland (67 unof.); Spain (unknown, 13 unof.); UK (80)	Bulgaria; Germany; Croatia (unof.); Netherlands (unof.); Poland (unof.); Spain (unof.)
EU non MLC	Romania (0)	Romania (114)	No.

⁶⁰ UK Maritime & Coastguard Agency. Personal interview in February, 2015.

⁶¹ <http://psz.praca.gov.pl/wybor-urzedu> (in Polish)

⁶² http://www.ums.gov.pl/karty/IBZ/wykaz_agencji.pdf or <http://stor.praca.gov.pl/portal/#/kraz/wyszukiwarka> or http://www.kraz.praca.gov.pl/Download/AZ_Marynarze.pdf (all in Polish).



	Public	Private	Combination
MLC	Malaysia (0); Morocco (1 not SRPS); Philippines (0); Russia (1)	Malaysia (4); Morocco (unknown); Philippines (822); Russia (391)	No.
Non MLC	China (1); India (2); Indonesia (unknown); Myanmar (0); Turkey (1); Ukraine (1)	China (210 unof.); India (339); Indonesia (unknown); Myanmar (163); Turkey (183 unof.); Ukraine (77 unof.)	China (unof.); India; Turkey (unof.); Ukraine (unof.)

Note: "Unof." stands for "unofficial"

Websites and online job boards⁶³

The responses of seafarers relating to current employment indicated considerable use of web-boards; with half of the respondents having registered on a web-board Internet service. Websites of RPS are present in several countries of the study. However, these are regulated under the same scheme of RPS in only 2 EU MLC ratifying States (i.e. Germany and Spain). Many RPS websites operate "virtually" without providing location information, and therefore it is not possible to determine which, if any, national or international inspection and monitoring system applies. This is required both under the MLC, 2006 and/or ILO C179 (1996). The operation of such virtual RPS may result in illegal operations or practices evidenced by the charging of fees to seafarers, in contravention of the MLC, 2006 standards. The importance for seafarers to understand the need to use certified/ licensed RPS entities was stressed on a number of occasions.

In general, the role of web "job-boards" as intermediates is not clearly addressed in the MLC, 2006 or covered by the existing RPS definition. It is important to note that it is difficult to trace all the websites that operate "as or similar to" SRPS in the targeted countries, as well as globally.

Private RPS Regulation

The MLC, 2006 does not require that Members promote the establishment of private RPS; but requires "where a Member has private recruitment and placement services operating in its territory whose primary purpose is the recruitment and placement of seafarers or which recruit and place a significant number of seafarers, they shall be operated only in conformity with a standardised system of licensing or certification or other form of regulation" (Standard A1.4 §2).

Among six EU MLC ratifying States there is a mandatory regulatory system (licensing/ certification), while in three States it is on a voluntary basis. Also, in Romania (EU, MLC non ratifying LSS) there is also a mandatory system. Outside the EU, there is a mandatory system in three MLC ratifying major LSS (Philippines, Russia, Malaysia) and in other four MLC non-ratifying major LSS (China, India, Myanmar, Turkey).

⁶³ Examples are included in section 8 of Annex I.



In the UK both categories of seafarers’ employment entities are regulated under a voluntary scheme. The validation of private employment agencies is performed by ROs; and, the Maritime and Coastguard Agency (MCA) audits the operations of RPS. There are so far 69 voluntary certified private RPS in UK, however non-certified RPSs are still subject to the UK Law. Where the certification of RPS is being assigned to Recognised Organisations (RO), as in the case of Denmark, Cyprus, the UK and the Netherlands (EU and MLC ratifying States) the Flag and Labour Supplying States are still required to closely supervise and control all SRPS operating in its territory⁶⁴.

In order to deal with non-licensed RPS, the case of the Philippines is herein discussed, representing a system of strict and double registration with more than one authority involved. In the Philippines, the private seafarer RPS licensing system requires that "*crew management companies must be registered with the national authorities (i.e. Security and Exchange Commission), and must secure a license at the Philippine Overseas Employment Administration (POEA) before they can start recruiting and deploying seafarers onboard vessels*", as mentioned by the representative of the competent authority. The representative of a private RPS in the Philippines claimed to be unaware of uncertified SRPS operating in the territory. The official website of the POEA publishes a full list of all SRPS, including those with valid licensed and those with expired licenses (with a relevant notice).

There is no licensing, certification or other regulatory system for private RPS in Greece, and Cyprus (where only public SRPS for national seafarers are allowed), and in Luxembourg, (where there is neither public, nor private SRPS) (EU MLC ratifying States). In the cases where the national owned fleet employs a significant number of foreign seagoing personnel, the non-regulation of private SRPS in the territory may not restrain branches of foreign SRPS from operating in the territory. However, the operation of these SRPS cannot be monitored for compliance with the MLC, 2006 requirements. It is important to note that in the case of Turkey, while there is a mandatory system for private RPS, the legislation excludes RPSs that do not offer permanent employment. Therefore all Turkish maritime-related RPS that specialise in seafaring positions for defined periods of employment are outwith the Turkish licensing system. Additional details are provided in Table 3.

Table 3 - Licensing/ Certification/ other regulatory schemes for Private SRPS in the targeted countries

EU MLC	<p>Mandatory (6 countries): Bulgaria, Croatia, Italy, Germany, Netherlands, Spain</p> <p>Voluntary (3 countries): Denmark, Poland, UK</p> <p>No system (3 countries): Cyprus, Greece, Luxembourg</p> <p>Unknown (2 countries): France, Malta</p>
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⁶⁴ MLC, 2006, Standard A1.4 §6.



EU non MLC	Mandatory (1 country): Romania
MLC	Mandatory (3 countries): Malaysia, Philippines, Russia Voluntary (2 countries): Morocco and Russia- as additional
Non MLC	Mandatory (4 countries): China, India, Myanmar, Turkey Unknown/ unclear (2 countries): Indonesia, Ukraine

The certification of SRPS by ROs is in certain cases in addition to the mandatory licensing system, or may be conducted due to absence of any licensing or certification system. Findings showed that a large number of RPS have been certified by a major classification society (acting as RO) before and after the implementation of the MLC, 2006, both in countries that have ratified the MLC and in non-ratifying countries. These findings may lead to the conclusion that RPS consider the voluntary certification by a recognised classification society an attribute that increases their corporate image and quality standing among seafarers and principals (shipping companies). This is for instance in the case of Turkey and Russia, where large (and usually international) SRPS receive additional optional certification from ROs (either ISO⁶⁵ or other relevant) as an extra proof of the provision of high quality services. This is also common in the cases of Greece and Cyprus, where only public SRPS is regulated, but private SRPS operate as branches of foreign SRPS.

The flexibility offered to the FS and LSS on the certification, licensing or other regulatory scheme for the operation of private RPS in the MLC ratifying States leads to a non-standardised system that impacts the supervision process. Moreover, this variation among the FS and LSS may affect the understanding of seafarers concerning the role, legality and the fulfillment of the RPS obligations, as per MLC, 2006.

Cost of RPS certification/ licensing

The high cost of obtaining RPS certification was raised by several RPS representatives during the implementation workshop. When there are a number of companies that issue certificates on different levels, the RPS have to pay several times for receiving a certificate by each one of them. It was highlighted that each country should issue one standardised certificate for the SRPS. With one document a lot of time and money could be saved. By 'several different certificates', the stakeholder referred to the various voluntary and - in some cases - obligatory certificates, such as ISO certification, Quality

⁶⁵ For further information see: <http://www.iso.org/iso/home/standards/management-standards.htm>



Management certification, or other government certificates. Also, the RPS certification/licensing is considered *"a critical issue that creates considerable overhead for shipping companies, who are individually responsible for ensuring the compliance with the MLC, 2006 for each RPS that they work with; some kind of central registry could resolve this issue. This could also address the complaint of ROs that many EU Member States do not report regularly on their actions to certify RPS nor do they publish lists of certified RPS"*.

Publication of licensed/ certified RPS by national authorities and ROs

Among the 14 selected EU members, four MLC ratifying States (i.e. Bulgaria, Denmark, Germany and Poland) publish lists of licensed RPS. Also, in Cyprus a list is published, but is not specific to seafarer RPSs. In Italy there is a public web portal for employment, but it remains unclear if licensed SRPS are included. With regard to Romania (EU member but MLC non-ratifying LSS) the competent authority publishes an online list⁶⁶.

Outside the EU there are a few cases of the publication and dissemination of the compliance status of SRPS. Among the MLC ratifying countries, the Philippines, Malaysia and Russia publicise such online lists. In Morocco, a list of licensed RPS is provided on the website of the Ministry of Employment and Social Affairs, but this is not specifically for seafarer RPS. Finally, only in India (among the selected six non MLC ratifying countries) a list of licensed seafarers' RPS is published on the website of Directorate General for Shipping.

Although it is considered difficult to maintain a published list of licensed SRPS, this is considered crucial, as noted by the representatives of classification societies who proposed *"lists of all certified RPS should be available in e.g. an official webpage, with name of the agency, address, date of issue of certificate and date of expiry. Also there should be information about the competent authority that seafarers can turn to in case of problems with employment through a non regulated RPS"*.

In the case of certification from authorised ROs (i.e. classification societies), a survey among the 12 International Association of Classification Societies (IACS) members⁶⁷ showed that six of them have certification standards based on MLC, 2006, Standard A1.4 (i.e. ABS, BV, DNV-GL, NK, RINA, and RS). Previous research, (Progoulaki, 2012), indicated that it is not a common practice among RO to publish lists of certified SRPS. The current survey revealed that only Class NK publishes online a list of the certificates that it has issued to seafarer RPS⁶⁸. In relation to this, the seafarers' survey revealed that they may often be unaware of the compliance status of the RPS they work with.

⁶⁶ <http://portal.rna.ro/SiteAssets/PDF/crewing.pdf>

⁶⁷ ABS: American Bureau of Shipping; BV: Bureau Veritas; CCS: China Classification Society; CRS: Croatian Register of Shipping; DNV- GL: Det Norske Veritas merged with Germanischer Lloyd; IRS: Indian Register of Shipping; KR: Korean Register of Shipping; LR: Lloyds Register; NK: Nippon Kaiji Kyokai; PRS: Polski Rejestr Statkow; RINA: Registro Italiano Navale; RS: Russian Maritime Register.

⁶⁸ http://www.classnk.or.jp/hp/pdf/activities/mlc/reg_mlc.pdf



The low level of publication of certified/licensed SRPS affects significantly the level of seafarers' awareness on the legality, status and fulfillment of MLC, 2006 RPS obligations. Further, PSC officers may encounter difficulties in validating that an RPS satisfies the requirements of the MLC, 2006 and the respective national provisions.

Guidance concerning RPS services in MLC non-ratifying States

All MLC ratifying States have the obligation to inform seafarers of the risks of being employed on ships flying the flag of a state that has not ratified the MLC, 2006. The study team identified two instances where guidance has been issued to national seafarers who are considering accepting employment through an RPS that is operating in an MLC non-ratifying state. The first was an EU Member and MLC ratifying state, i.e. the UK, and the second was an MLC ratifying FS outside the EU (outside the sample of targeted countries of this study), i.e. Panama.

6.2.3. RPS Operations

Seafarers' personal data and verification of qualifications

The representative of the competent authority of Cyprus (EU member, MLC ratifying state) mentioned that the conditions under which seafarers' personal data may be processed by seafarer RPS is defined in Section 28 of Law 126(I)/2012. No relevant legislation was identified in other countries, applying specifically to seafarers.

Interviews of private RPS showed that the seafarer's personal data is kept in records that follow the requirements of Standard A1.4. Also, there is no indication that private RPS in any country of the targeted States are authorised to use the electronic signature of seafarers.

The role of the websites operating as seafarer RPS needs further investigation for the access, processing and sharing of seafarers' data, as there is no control of the shared information of the seafarer to third parties.

The verification of seafarers' qualifications and validity of certificates is available online by the IMO⁶⁹, while some countries have established a national system for allowing the check of the seafarers documents' validity (e.g. Poland, Cyprus, Philippines and other).

Access of seafarers to world maritime labour market

Although there is no data available on the exact number of seafarers using private RPS, one can estimate that the majority of the world maritime labour is recruited through the mediation of these entities. By correlating the number of seafarers among the major LSS and the national owned and flagged fleet sizes among the major FS and registries, one can understand that national seafarers who can seek directly employment by

⁶⁹ <http://www.imo.org/OurWork/HumanElement/TrainingCertification/Pages/CertificateVerification.aspx>



approaching national shipping companies are rather limited. These are found mainly in countries where there is a large state owned fleet or national flagged fleet, such as China, Greece and Russia. On the other hand, in those countries which lack national fleets but have a large number of seafarers, private RPS are utilized to promote their maritime labour in the international shipping market (e.g. the Philippines). In countries where no public SRPS operate, it is possible that private RPS create the link between shipowners and crew⁷⁰. The implementation of the MLC, 2006 does not seem to have affected the access of seafarers to the world maritime labour market, while, as discussed during the implementation workshop, the employment of seafarers from countries that have not ratified the MLC, 2006 seems to have remained unaffected.

The majority of seafarers who participated in the study survey were hired in their current position directly by the shipping company or through an RPS, each accounting for 37% of the responses. The survey revealed that some seafarers, especially of Filipino nationality have experienced being deterred from gaining employment for which they were qualified, via lists known as “blacklist” or “watchlist”. Findings provided indications of ‘blacklisting’ and ‘watchlisting’ in some large LSS (i.e. the Philippines, a non EU, MLC ratifying State, and Turkey, a non EU, MLC non-ratifying State), while ILO CEACR has made particular notes to the Philippines requesting the steps taken by the government to avoid the possibility of “watchlists” of seafarers used by RPS. There are also indications from the ITF that “blacklisting” is operated ‘undercover’, for instance, by forcing the use of “company” doctors who refuse to issue medical certificates to seafarers who are known as complainants. Interviews showed that the ILO and ITF have considered establishing ‘white and grey’ lists for RPS but it is difficult to accuse without formal proof, and there is a legal liability if challenged.

Charging of illegal fees

The online survey among seafarers revealed that respondents have experienced charges of fees from private RPSs in MLC ratifying countries. Furthermore, in respect of websites offering maritime job employment, seafarers may pay a fee to register, upload their Curriculum Vitae (CV) and receive information on available job openings. ILO CEACR country specific comments mentioned the current national legislation in Poland, where new legislation is expected to be developed that will reflect the MLC, 2006 requirements with respect to any fees that seafarers can be expected to pay.

Payment of wages

Six percent of the 309 respondents to a question relating to the payment of wages in the seafarers’ survey claimed that wages are not paid according to the scale in their seafarer agreement. Fifty four percent of 169 respondents reported deductions from their wages mostly mentioning taxes, social security and other government mandated items. During

⁷⁰ Further analysis on the role of manning agencies and crewing companies in maritime labour supply and demand chain can be found in Progoulaki (2012) and Papademetriou *et al.* (2005).



the implementation workshop there was overall agreement that the majority of complaints recorded relate to unpaid wages. This was confirmed by the data from MOUs and THETIS. In the Philippines and India, there are a considerable number of complaints from seafarers working on passenger liners, mostly due to the non payment of repatriation, and also of cases where repatriation costs were charged to the seafarers.

6.3. The supervision and inspection of SRPS and seafarers' complaints

6.3.1. SRPS Supervision and Inspection

The supervision or inspection systems of licensed or certified or otherwise regulated RPS appear to be non-existent among many of the targeted countries, even among MLC ratifying States. There are cases where the supervision is performed by the national authorities (e.g. Croatia, China), and other by the RO (e.g. Netherlands). Specialised inspection teams to combat unscrupulous temporary work agencies may be used (e.g. Netherlands, Philippines). This is similar to the situation in Panama where inspectors visit RPS offices without notice to verify compliance. The form of the supervision may vary, as in the case of Poland, where there are "initial, renewal and ad hoc audits", while Cyprus has a supervision system based on quality standards. The frequency of supervision actions and auditing is mainly once per year, while there are cases where audits take place on a 'risk-based' approach. Denmark has implemented a 'risk-based' approach in the RPS supervision. The effectiveness of this approach was questioned by the ILO representative during the workshop, and has been identified as an area for further investigation by CEACR. According to the 'risk-based approach', licensed private SRPS are inspected by the Danish Maritime Authority only if complaints are registered. Following the CEACR observations, ILO has decided to have under a close look the States that choose the 'risk-based' approach in monitoring and supervising SRPS.

Penalties may also vary; e.g. in Panama there are two types: (a) temporary suspension with a fine, and (b) definitive cancellation of the operating license. Among the major causes that can motivate a definitive cancellation of the operating license in Panama are: charging seafarers for the service given, discrimination and blacklisting.

During the implementation workshop it was stressed that auditing and controlling of the RPS should be more intensive and transparent. Supervision should be explicit and undertaken by national authorities or other relevant bodies. The idea of introducing a team of EU inspectors, similar to the internationally based system of compliance applicable to the STCW Convention was discussed during the workshop. This was opposed by the delegates representing shipowners and RPS because it was considered that there is no legal base for such inspections by an EU body.

Further, with regard to PSC inspections, the workshop delegates discussed that PSC officers are not well equipped to investigate the basis of recruitment and placement. "PSC officers are not over-familiarised with the RPS under the MLC, 2006. Examination of



social security is not a responsibility of PSC, as such responsibilities are not clearly defined under the MLC, 2006". The delegates stressed that procedures for the PSC need to be further clarified: *"PSC needs to avoid disadvantaging the seafarer and there should be a stronger focus of PSC to train and allocate more specialised PSC officers"*. Capacity building for PSC officials to better understand the inspection requirements of Regulation 1.4 of the MLC, 2006 was stressed. Finally, it was mentioned that the level of inspections between FS or PSC in different ports varies considerably.

6.3.2. Investigation and handling of seafarers' complaints

The certification criteria of two major classification societies operating as ROs require that the RPS operate complaint-handling procedures (Progoulaki, 2012). Thus, the certified RPS shall, by default develop, follow and maintain a procedure for handling complaints. However, this does not ensure that complaints of seafarers' concerning their professional relationship with the RPS reach the competent authorities of the FS or LSS or PSC.

Most seafarers who responded in the online questionnaire mentioned that they have received the official complaint procedure of the shipping company and the RPS they work for, and that they are aware of the contact details of port and state authorities in case they wish to record a complaint. However, Port Chaplains who were interviewed by the study team shared their concern over the unwillingness of Filipino (and other nationalities) seafarers to complain against an RPS, due to a fear of being blacklisted. It was mentioned that many of the seafarers are willing to accept illegal fees and charges in order to obtain a position on-board a ship. The same applies to complaints against the shipowners. Although confidentiality is a matter that a few FS have attempted to safeguard by introducing specific legislation (e.g. Cyprus), in practice many seafarers are unwilling to make a complaint. The seafarers' survey showed a low response rate in the questions relevant to complaints. From the responses there are indications that seafarers are aware of the formal complaints procedures, but prefer less formal and more autonomous approaches to the reporting of complaints. Workshop delegates representing trade unions mentioned that seafarers coming from the Black Sea Region are generally not aware of the complaint procedures that apply onboard, while it was noted that no particular complaint procedure for crewing agencies seemed to exist in Russia.

With regard to FS and LSS complaint recording and investigation obligation, only one country from the sample has recorded and investigated complaints concerning the MLC, 2006 standards. Denmark (EU Member State and MLC ratifying State) has recorded up to date four complaints from seafarers; three of the complaints were related to non-Danish ships, while one of the complaints resulted in detention of the vessel due to a serious breach of the MLC, 2006 requirements.

Findings show that the problem lies not with the complaint handling procedure, but rather on the implementation of this procedure. The issue of confidentiality needs to be addressed, to ensure an effective and useful complaint process, while it is very important to enhance the complaint recording and investigation obligations of the States.



6.4. CBAs, social security and insurance cover

6.4.1. Seafarers' Employment Agreements

Employment conditions

Standard A2.1 §4g of the MLC, 2006 on SEA, envisages SEAs of an indefinite period. Considering Standard A2.5 §2b on repatriation and Standard A2.4 §2 on the entitlement to leave, one understands that the MLC, 2006 establishes some limitations on the period of continuous service on board a ship. During the workshop, differences were identified in the period of employment, while it was questioned if this period could be extended, and if the contracts included a month of holidays within the 12 months, or after it. The ILO representative commented that agreement termination is an SEA requirement, as SEAs can be made for indefinite period. Regulation 2.4 and Standard A2.4 of the MLC, 2006 state that seafarers have the right to paid annual leave from the time their contract starts. The annual leave shall be calculated on the basis of 2.5 calendar days per month of employment. Thus seafarers are building up entitlement to paid leave from the moment that their contract begins. However, in practice this entitlement is not always respected as some seafarers work for 12 months or more without being given leave, let alone paid annual leave. Within the EU, the entitlement to paid annual leave is included in Directive 1999/63/EC⁷¹, as amended by Directive 2009/13/EC, which is apparently not respected in practice. It was stressed by the ILO representative that *"a seafarer cannot work for 12 months without holidays, because it is a matter of fatigue"*, and fatigue may put at risk the ship's safety.

The seafarers' survey revealed that a small percentage of respondents claimed employment contracts which lasted for more than 12 months, while there were comments about the notice period for early termination required from seafarers which was longer than the period required from the shipowner. This point however, requires examination on a case-by-case basis, as the early termination clause is found to vary among different CBAs. CEACR country-specific notes to the Danish government focused on clarifying the signatory parties to the SEA, and proposed amending the standard form agreement. CEACR proposed clarification on the entitlement to paid annual leave during the seafarers' first qualifying year and other cases, and establishing provisions in national laws or a national CBA setting out the procedure and the standard of proof concerning "serious default of the seafarers employment obligations" in relation to the the shipowner's entitlement to recover the cost of repatriation from the seafarer's wages or other entitlements. Finally, the literature review (Thomas et al., 2005) indicated different practices concerning "work to leave" periods in China, India and the UK, related to the availability of surplus national seafarers in the national fleet.

⁷¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31999L0063>



Dual seafarers’ contracts

Findings indicated a practice according to which seafarers sign two SEAs, one which is the formal, official one to be used in case of a PSC inspection, and a second which includes the actual wage, terms and conditions of the employment, which are less advantageous to the seafarer than those of the official contract. This practice seems to be common in the maritime labour market for seafarers from developing countries, and especially the Philippines, where permission to leave the country will not be granted if the SEA does not conform to the conditions of employment required by the competent authority. A similar case concerning seafarers from Bangladesh is presented in section 7 of Annex I, where a manning agency approaches ship management companies with the motive to employ crew with dual contracts and low wages for certain ranks.

Existence and status of Collective Bargaining Agreements (CBA) for seafarers

The desktop research and interviews with stakeholders revealed that the availability of Collective Bargaining Agreements for seafarers is not widespread, and very often difficult to trace. Further, there is a general inconsistency between EU and non-EU countries regarding the status of the CBAs that complicates the examination of this issue. The “voluntary versus obligatory” status of CBAs as stated by the interviewed stakeholders reflects the variety that is found in practice, among the FS and LSS. The CBAs’ status may vary significantly. CBAs can be equivalent to national legislation (e.g. Greece), are only in the form of bilateral agreements (e.g. Poland) and can be on a voluntary basis and limited to nationals working on national-flagged ship (e.g. Cyprus). There are also CBAs at company level, such as for Maersk Lines. The Philippines has 43 bilateral agreements with MLC ratifying and non-ratifying countries, as well as with shipping lines. In Greece there is one CBA for nationals working on national-flagged ships, and six CBAs for Greeks working on foreign-flagged ships (three for cargo ships 4500 dwt and over, and three for passenger ships). The validity of the Greek CBAs for passenger ships is under question by some stakeholders, since they have not been revised nor re-validated since 2012 (Progoulaki, 2014). The following table summarises the existence of CBAs for seafarers in the targeted countries.

Table 4 - CBAs for seafarers in the targeted countries

<p>EU MLC</p>	<p>National: Cyprus (voluntary); France (voluntary); Germany (two voluntary); Greece (one obligatory, six voluntary); Netherlands (voluntary); UK (voluntary). Bilateral: Croatia (with country and company); Poland (with country). Non existent: Bulgaria; Denmark; Luxembourg; Malta. Unknown: Italy; Spain.</p>
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EU non MLC	Non existent: Romania.
MLC	National: Philippines (obligatory); Morocco (voluntary); Russia (voluntary). Bilateral: Philippines (with 43 countries); Russia (with country). Non existent: Malaysia.
Non MLC	National: China; India; Myanmar;Ukraine (voluntary). Bilateral: China (with four countries). Non existent: Turkey. Unknown: Indonesia.

The Collective Bargaining Convention (C154)⁷² (and its accompanying Recommendation, i.e. R163)⁷³ were adopted by the ILO to complement the Right to Organise and Collective Bargaining Convention (C98). According to C154 (Article 2) the term collective bargaining "extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations". In terms of the methods of application, the provisions of C154 (Article 4) "shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations". Further, C154 requires that measures adapted to national conditions shall be taken to promote free and voluntary collective bargaining (Preamble and Article 5). While C154 has not been consolidated in the MLC, 2006, eight of the countries under examination have ratified it⁷⁴.

The lack of CBAs in many LSS may be related to structural problems in trade unionism and obstacles in collective bargaining in the maritime industry. Alderton (2005:90) noted that "there are no data series listing seafarers' trade unions and their memberships on a world regional or global basis. Neither there are any regular surveys of the extent of collective bargaining. The best available indication of the scale of trade unions can be

⁷² ILO (1981), C154 Collective Bargaining Convention, ILO, Geneva. Online: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312299:NO

⁷³ ILO (2015), Promoting collective bargaining (C154 and R163), International Labour Office, April 9. Online: http://www.ilo.org/travail/areasofwork/WCMS_244335/lang--en/index.htm

⁷⁴ Among the 46 ratifying states are: Cyprus, Greece, Morocco, Netherlands, Romania, Russia, Spain and Ukraine. Full list of C154 ratifications: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312299:NO.



gleaned by looking at the number of trade unions affiliated to the ITF⁷⁵, according to which around 50 seem to be directly related to seafarers' trade unions. Apart from the absence of the state-controlled trade unions of China, most of the world's eligible organisations are ITF affiliates⁷⁶.

The availability of CBAs in English (as stipulated in MLC, 2006, B2.1.1 §1) is not widespread among the targeted States. This may complicate the on-board inspections by PSC officers, and may impact comprehension of the included terms and conditions by some seafarers.

Seafarers' awareness of SEA

Further, the seafarers' survey showed that more than one half (60%) of seafarers responding to survey questions relating to employment contracts and terms of agreement are covered by CBAs, and more than one quarter of the respondents claim not to have been given a chance to examine and seek advice on their SEA before signing.

6.4.2. Social security benefits for seafarers

National social security systems

At the time of ratification, four EU members (i.e. Croatia, France, Greece, Luxembourg) covered all nine of the social security branches, while only one (Malta) covered the minimum 3/9 branches. Cyprus⁷⁷ covers 4/9, while Italy, the Netherlands, Poland and the UK also covered almost all branches (8/9) at the time of ratification. Romania, an EU Member State that has not ratified the MLC, 2006 currently covers 5/9 branches. Among the targeted MLC ratifying countries of the study outside the EU, Russia and the Philippines⁷⁸ cover 8/9 branches, Morocco 7/9, while Malaysia covers the minimum 3/9 social security branches. Among the countries outside the EU, who have not ratified the MLC, 2006, Turkey covers 7/9 (however there are indications that seafarers have to pay most branches by themselves, representing around 45% of their salaries), China 6/9, Ukraine and Myanmar 4/9, while India offers several benefits, but not identical to the MLC, 2006 social security branches.

⁷⁵ The full list of the 274 affiliated unions to the ITF per country is available online: <http://www.itfglobal.org/en/about-itf/itf-affiliates/?s=5542>

⁷⁶ Alderton (2005: 91-92) noted the basic problems that typify trade union activity and collective bargaining in the maritime industry include: (a) difficulty to organise workers because of discontinuous sea service, (b) competition in some of the labour supply nations between strong trade unions and more compliant ones, (c) the fact that employment contract is often made, or mediated between the seafarer and a crewing agency, rather than with the shipowner directly, which tends to weaken the ties between worker and union.

⁷⁷ More details about the way that the social security branches are covered in the case of Cyprus can be found in Annex I, section 8.

⁷⁸ More details concerning the way that the social security branches may be covered in the Philippines are presented in Annex 1, section 8.



During the implementation workshop the issue of social contribution payments into different social security systems worldwide was discussed. In particular, problems appear to arise with regard to contributions for pension among the various national pension systems, although the MLC, 2006 already exempts the relevant ILO's Convention C71⁷⁹. The stated social security branches in the national country profiles of the ILO do not clarify if the covered social security branches are those that apply to all citizens, to national seafarers who work on national or foreign flagged ships, and/or to foreign seafarers who work on national flagged ships. Therefore, gaps in coverage may appear when seafarers are employed on a ship flying a flag of a different country than their country of residence, and/or when they are resident for a time in a different country than their country of nationality or ordinary residence. As noted by ILO (2012, p. 4)⁸⁰ varying levels of protection between the national social security schemes, in terms of contingencies covered and levels of benefits can also lead to inequalities in social security coverage between the seafarers working on a same ship, depending on their nationality or country of residence. Considering that it is quite often that seafarers are drawn from countries that have limited or no social security systems, they may have no coverage at all in their country of residence. In the absence of bilateral or multilateral agreements between the countries concerned (i.e. LSS and FS) it is difficult to ensure the provision of social security and equality in social security coverage between seafarers from different countries. It is also difficult to ensure maintenance of social security rights of seafarers that move from one national system to another. Thus, and following CEACR first comments on the implementation of the MLC, 2006 at the national level, as well as during workshop discussions, the importance for the ILO Member States was underlined to provide revised and specific information regarding the covered social security branches in their territory. More specifically, clear data is required specifying which social security branches are provided for all citizens, which are provided to national seafarers who work on national flagged ships or to seafarers who work on ships flying any flag. In the context of the EU rules on the coordination of social security, a problem was signalled with A1 forms⁸¹, which either were not given out by the competent national social security organisation, or where given out too late to enable payments to be remitted.

Bilateral or multilateral agreements on social security

The MLC, 2006 states: *"each Member shall take steps according to each national circumstance to provide the complementary social security protection referring to in A4.5 §1 to all seafarers ordinarily resident in its territory. This responsibility could be satisfied,*

⁷⁹ Online: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C071

⁸⁰ International Labour Standards Department (2012), Handbook: Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers, June 11, 2012. ISBN: 978-92-2-125537-6. Online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_170388.pdf

⁸¹ A1 Form: Statements proving that seafarers pay their social contributions in another EU country, in case the worker is a posted one or works in several countries at the same time. Further information: http://europa.eu/youreurope/citizens/work/social-security-forms/index_en.htm



for example through bilateral or multilateral agreements or contribution-based systems” (Standard A4.5 §3). Thus, the promotion of such bilateral or multilateral agreements needs to be enhanced. The interviews with representatives of the Seafarers’ Trade Union in Greece indicated that seafarers’ trade unions in Greece and Italy (both EU Member States) are in discussion regarding a bilateral agreement concerning the social security of seafarers who are employed on ships making trips between Greece and Italy.

A form of a multilateral agreement is considered in Regulation EC 883/2004 on the coordination of social security systems⁸². More specifically, according to the Regulation (EC) 883/2004⁸³ on coordination of social security schemes, each Member State remains responsible for its own social security system. The regulation lays down the rules how to make work these different systems together. Also, the regulation applies to the EU nationals and to the third country national legally residing in the EU. The regulation is governed by the principle of “one applicable legislation”, so that a person can be covered only by the legislation of one Member State. In case of seafarers, the applicable legislation is laid down in Article 11.4; it is either the legislation of the flag of the vessel (flag principle) or the legislation of the country where the person who pays the seafarer is located (provided it is another EU Member State than the FS). However, in the situation when both the MLC, 2006 and the EC Regulation can apply, the EU Regulation takes precedence, as indicated by an EC officer. In the EU, the flag principle was chosen so that all seafarers serving on the same vessel would be covered by the same legislation. If the principle of the state of residence was chosen, seafarers working on the same vessel could be covered by different legislations. It could be easier for the seafarers but more complicated for the owners of the vessels. Moreover, it would not prevent the owners from cutting the costs by employing seafarers residing in the country where social security costs are the lowest. Article 16 of the EC Regulation allows introducing exceptions to the rules on applicable legislation by way of agreement between the Member States. It is true that according to such an agreement it would be possible to rule that the legislation of place of residence apply to seafarers. However, such agreements are concluded on a case-by-case basis and do not establish new rules with a general scope of application. It is difficult to envisage how such agreements could be concluded across the Member States.

Further, between EU and non EU Member States having ratified the MLC, 2006, Croatia has a bilateral agreement with Norway on a seafarers’ CBA, thus social security may be included in the agreement’s terms. Apart from the case of EU members in bilateral agreements with the Philippines (see below), other cases are identified and mentioned in Annex I, Table 5.

⁸² Further information available online: <http://ec.europa.eu/social/main.jsp?catId=26&langId=en>

⁸³ Online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>



Among the MLC ratifying LSS outside the EU, the Philippines has 43 bilateral agreements with other countries for seafarers- related issues⁸⁴. Among these are 11 EU members (Cyprus, Denmark, Italy, Greece, Luxembourg, Malta and other), and non-EU members (South Korea, Indonesia, Malaysia and Ukraine). The CEACR has recently requested from the Philippines competent authority to submit copies of bilateral agreements, relevant to social security, or other MLC-related areas (CEACR, 2015b). The case of Panama (MLC ratifying FS) is presented as an example in section 8 of Annex I.

It is important to note that it is difficult for ILO Member States and for classification societies in their role as ROs to validate that the social security offered to the seafarer from his/her country (either MLC ratifying country or not) is in compliance with the MLC, 2006 requirements. In practice, the RO expects to see the social security branches covered by the State in the SEA. The most usually recorded are medical care, sickness benefit and employment injury benefit, the reason being that these areas are provided for in the shipowner's P&I Club cover. Where the seafarer is resident in an MLC non-ratifying State, this is a more difficult issue and the RO will typically look for a Certificate of Entry from the P&I Club to satisfy the inspector that there is some social security provision available.

6.4.3. Compensation and insurance cover

Repatriation and abandonment

The compliance of States to the MLC, 2006 amendments related to Standard A2.5 concerning repatriation, is generally covered by P&I insurance, while relevant clauses may be incorporated in CBAs (as in the Philippines⁸⁵). The case of China is worth noting (a non EU non MLC ratifying LSS). Chinese seafarers are protected from abandonment because, as per China Labour Law, and Chinese SRPS must deposit an amount of money⁸⁶ at the competent authority's nominated bank account, to insure cost of crew repatriation in case of abandonment by a shipowner. As of October 2015, the 2014 MLC amendments with regard to abandonment have not entered into force.

Insurance or other measure to compensate for monetary loss

Seafarers' compensation for monetary loss is in most cases, covered by P&I insurance. However the findings showed that the definition of 'monetary loss' is not clear enough.

⁸⁴ Further information available online: http://www.poea.gov.ph/blas/BLA_Seafarers.pdf

⁸⁵ Referring to POEA Standard Employment Contract (online: <http://www.poea.gov.ph/docs/sec.pdf>) and in the R.A. 10022 -Amended Migrant Workers Act (online: <http://www1.umn.edu/humanrts/research/Philippines/RA%2010022-%20%20Migrant%20Workers%20Act.pdf>).

⁸⁶ The sum of one million USD was mentioned by the representative of an SRPS. Details are to be found in the published Provisions on Manning Foreign-flagged ships by Chinese Seafarers of the People's Republic of China. Online: <http://en.msa.gov.cn/index.php?m=content&c=index&a=show&catid=25&id=3>



The fact that both the RPS and the shipowner may be liable to this obligation can complicate the employment of seafarers, since relevant terms shall be included in the SEA. The case of China is highlighted again, as according to the requirement of 'Act of People Republic of China Ministry of Transport No.3 in 2011', the RPS shall provide a financial security at China MSA nominated bank account⁸⁷, which ensures compensation to seafarers for monetary loss that they may incur as a result of the failure of RPS or the relevant shipowner under the SEA to meet its obligations to them.

Compensation for the ship's loss or foundering

Similarly, with regard to the compensation of seafarers for the ship's loss or foundering, the P&I cover is applied. In the Philippines (a MLC-ratifying LSS outside the EU), in addition to the P&I insurance, a copy of the certificate of cover is a requirement of the national authorities (i.e. POEA). In China (a non EU non MLC ratifying state) this term is covered by the CBA and is included in the SEA.

P&I and private insurance

P&I clubs do not provide insurance cover arrangements for crewing agencies, but provide cover only for shipowners' and ship operators liabilities to third parties. While RPSs are not eligible to enter P&I clubs, they seem to be in need of an insurance cover against the risks they are exposed to due to the MLC, 2006. According to Regulation 1.4 of the MLC, 2006 private RPS are responsible for unpaid wages, which is a major liability and needs to be insured. Findings from analysing the case of a private insurance company that offers services adapted to the requirements of the MLC, 2006 showed that there are private insurance schemes covering health, injury, and repatriation; and, that these policies can be written in the name of the seafarer and paid for by the shipowner. Thus, the seafarer is insured in his/her own individual right, with payment made by the shipowner.

7. Policy Recommendations

7.1. Introduction

The study findings and discussion indicate there is a need to examine ways in order to enhance the implementation and compliance monitoring of MLC, 2006 in practice, across MLC ratifying States, and to encourage ratification of MLC, 2006 in non ratifying States. As noted by many stakeholders, this could be achieved through the provision of support and guidance, to further enhance the overall implementation of the MLC, 2006.

⁸⁷ The measure of insurance and the sum of one million USD was mentioned by the representative of an SRPS. Details are to be found in the published Provisions on Manning Foreign-flagged ships by Chinese Seafarers of the People's Republic of China. Online:

<http://en.msa.gov.cn/index.php?m=content&c=index&a=show&catid=25&id=3>



The proposed study recommendations are described as potential policy actions (policy recommendations) that address the key study findings.

Category A (MLC awareness support) relates to the provision of MLC awareness campaigns for seafarers. Category B (definition, regulation and operation of SRPS) includes a voluntary SRPS self-assessment and compliance review process, and an electronic data-sharing tool to enable stakeholders exchange information on implementation measures of Reg. 1.4 of MLC, 2006. Category C (supervision and inspection of SRPS and recording and handling of complaints) relates to enhancement of SRPS national reporting by EU Member States, development of a database to include inspection findings, complaints and other relevant information, enhanced CBT training on MLC for PSC inspectors, and the establishment of a new inspection regime for SRPS in and outside the EU, similar to the internationally based system of compliance applicable to the STWC Convention.

Category D (forum for the promotion of bilateral/ multilateral agreements for seafarers' employment, social security and insurance coverage) proposes further research and discussion at the national level. It recommends the initiation of a forum for discussion of bilateral/ multilateral collective bargaining agreements among EU Member States, and between EU Members and non EU States. It further proposes research into the feasibility of establishing bilateral/ multilateral agreements on social security and comprehensive insurance coverage, facilitated through a dedicated support fund. The study team is aware that the subjects of this specific recommendation fall within the exclusive competence of the EU Member States.

The proposed policies could be implemented at the European, international (ILO) and national (Member States and social partners) level. The collaboration of the Commission with national authorities and organisations, as well as international bodies (e.g. the ILO, ITF, etc.) could:

- enhance the effectiveness of these policies at the national and international level;
- ensure level playing field for EU shipping companies;
- maximise the benefits from the implementation of MLC, 2006 for EU seafarers and EU shipping companies; and,
- maintain and enhance the leadership role of the EC, represented by DG-MOVE, in the promotion of MLC, 2006 as the primary multi-national mechanism for enhancing the employment and social security rights of both EU and non-EU seafarers.



7.2. Overview of the policy recommendations

Error! Reference source not found. provides a high level overview of the policy recommendations, grouped as described above.

Table 5 - High-level grouping of policies to enhance the implementation of MLC, 2006

Group	Goal	Main Stakeholder(s) responsible for implementing the policy	Additional stakeholders involved and impacted
A.	MLC awareness support		
	<i>A1 Increase the level of awareness of seafarers of rights under MLC, 2006</i>	<i>Social Partners in the EU level (ECSA & ETF); Social Partners at national level (EU Member States, seafarers' trade unions, shipowners' associations)</i>	<ul style="list-style-type: none"> • Seafarers • Seafarers' trade unions • Shipowners' associations • FS/LSS competent authorities • SRPS Maritime Education & Training institutions
B.	Definition, regulation and operation of SRPS		
	<p><i>B1 Develop a voluntary SRPS electronic self-assessment and compliance review process, utilising third party MLC experts</i></p> <p><i>B2 Develop an electronic "MLC SourceBook" to enable stakeholders to exchange information on implementation measures</i></p>	<p><i>ILO through their Local office network ILO Member States</i></p> <p><i>ILO</i></p>	<ul style="list-style-type: none"> • National competent authorities • PSC officers • International and European organisations (ILO, EC) Non-ratifying States (EU and non EU)

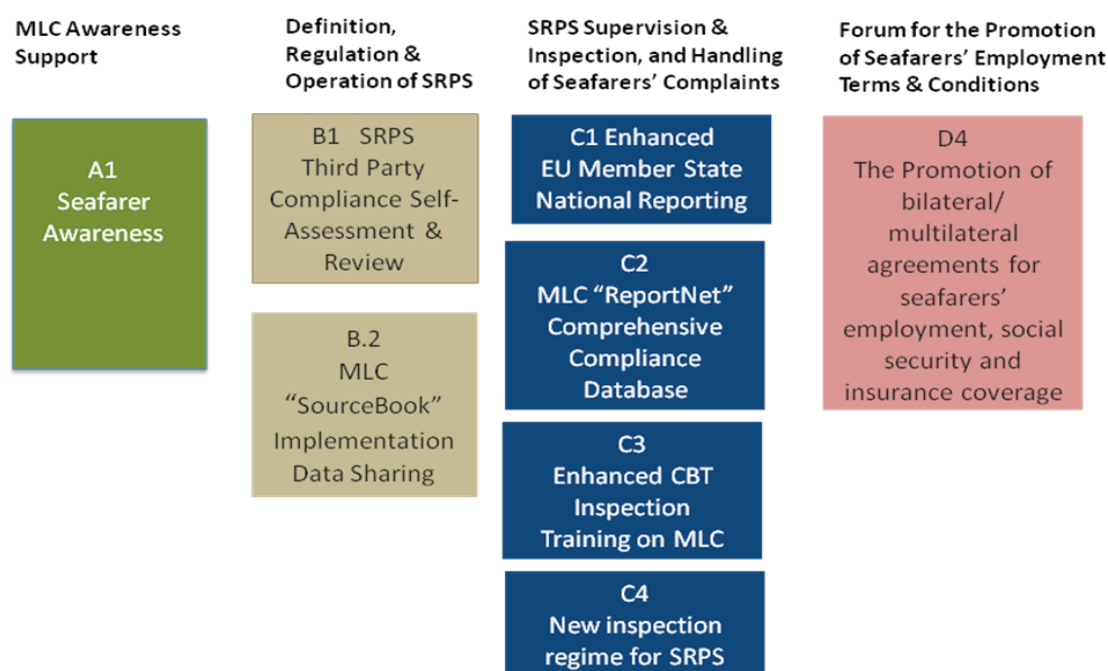


Group	Goal	Main Stakeholder(s) responsible for implementing the policy	Additional stakeholders involved and impacted
C.	Supervision and inspection of SRPS and recording and handling of complaints		
	<p><i>C1. Enhance SRPS national reporting at the European level (Member States) for the certified/ licensed/ otherwise regulated SRPS</i></p> <p><i>C2. Develop a comprehensive database ("MLC ReportNet") containing inspection findings (PSC and MOU inspections), seafarers' complaints, and other relevant operational findings (from MLC ratifying and non ratifying States)</i></p> <p><i>C3. Enhanced MLC inspection training (CBT) materials integrated with test-case examples for PSC officials</i></p> <p><i>C4. Establish a new EU inspection regime for SRPS inside and outside the EU similar to the internationally based system of compliance applicable to the STCW Convention</i></p>	<p><i>EU Member States' competent authorities</i></p> <p><i>ILO</i></p> <p><i>Member States, National Port State Control authorities</i></p> <p><i>LSS and EU Member States' competent authorities, SRPS</i></p>	<ul style="list-style-type: none"> • SRPS • MLC ratifying States (EU and non EU) • MLC non-ratifying States • ROs • International and European organisations (ILO, EC) • EMSA
D.	Forum for the promotion of bilateral/ multilateral agreements for seafarers' employment, social security and insurance cover		
	<p><i>D1. Provide the basis for the discussion on the promotion of bilateral/ multilateral agreements for seafarers' employment, social security and insurance coverage</i></p>	<p><i>Member States; EU and non-EU FS, LSS; Social Partners</i></p>	<ul style="list-style-type: none"> • Member States (competent authorities and national labour administrations) • Social partners (seafarers' trade unions and shipowners' associations) • Seafarers • EU Administrative Commission for the Coordination of Social Security Systems • ILO



The recommendations defined by the study team are measures that would both enhance the awareness of seafarers as to their rights under MLC, 2006, and enable MLC stakeholders to better guarantee these rights and duties, as required under the MLC, 2006. To achieve this goal the policy recommendations have been grouped into the abovementioned four categories, each being designed to address the key study findings. Figure 1 provides a schematic overview of the above policy recommendations.

Figure 1 - Schematic overview of proposed policy recommendations



7.2.1. Category A - MLC, 2006 awareness support

Category A relates to the provision of an MLC awareness campaign for seafarers, that could address the delivery of electronic and paper-based materials designed to be attractive and engaging while providing relevant information to seafarers from differing national backgrounds and exhibiting differing levels of skills and education.

Recommendation A1 – Seafarer MLC, 2006 Awareness Campaign is targeted at the EU Social Partners (EU Member States, shipowners represented by ECSA and seafarers' unions represented by ETF) and social partners at the national level. This recommendation was proposed to address the lack of sufficient awareness on MLC, 2006 amongst seafarers; and the lack of knowledge of the MLC, 2006 provisions relating to the operation of SRPS, especially amongst the most vulnerable seafarers. Prior to implementing this policy recommendation, a survey of social partners and individual seafarers is proposed to be undertaken in order to determine deficiencies in current MLC introductory materials and to study most effective approaches to the presentation of entitlement related subjects to different categories of employees.



7.2.2. Category B - Definition, regulation and operation of SRPS

Category B includes two recommendations that could be initiated by the ILO.

Recommendation B1 – Development of an SRPS self-assessment and compliance review process defines a voluntary SRPS electronic self-assessment and compliance review mechanism. The initial self-assessment module would enable SRPSs to undertake electronic self-assessments of their operational procedures and methods followed by a voluntary compliance review process utilising independent MLC evaluators. Evaluators could be MLC experts with experience in PSC, experienced inspectors of classification societies or others). SRPS that are well managed and pass the compliance review would be visibly acknowledged.

A prerequisite for the implementation of this initiative would be the definition of a set of generic MLC, 2006 SRPS operational requirements, that take into account the differing national SRPS licensing/ certification and/or other regulatory forms and measures.

After completing the self-assessment, SRPS would have the option to request an independent third-party review of their operations. This review would be performed by a third party validator, accredited and appointed by the organisation implementing this policy. SRPS that successfully pass the review process would be recorded in a database of “gold standard” SRPS.

The goal of this recommendation is to address the lack of internationally accepted SRPS operations, certification and inspection standards that prevent the establishment of a central database of “reviewed” RPS operations, and the inability of SRPS to self-validate their operations and establish a compliance gap-analysis prior to applying for certification and committing to “unknown certification” costs.

Prior to implementing this policy recommendation, studies are proposed to be undertaken among SRPS to: 1) identify a set of common SRPS operation standards that could be applied across all EU and non EU MLC ratifying States, taking into account the differing national SRPS licensing/ certification and/or other regulatory forms and measures; and 2) determine the feasibility of the development of an “SRPS MLC Compliance Self-Assessment Guide” that will allow an SRPS to self-assess its MLC compliance based on common standards.

Recommendation B2 - Development of an electronic “MLC SourceBook” is proposed to enable stakeholders to exchange information on implementation measures. A database (“MLC SourceBook”) is proposed that would enable the structured sharing of information, legislation and procedures concerning the implementation of SRPS and the provision of seafarers’ social security. The ILO could take a lead in the implementation of this recommendation.



The proposed “SourceBook” initiative will support the collection of, and provide access to, key information concerning the SRPS licensing/ certification and supervision systems, contact details and relevant laws and policies applied in (MLC ratifying) LSS and FS.

This recommendation is proposed to address the lack of awareness identified by the study on the certification and monitoring procedures and process that have been adopted in MLC ratifying States (including EU Member States).

7.2.3. Category C - Supervision and inspection of SRPS and recording and handling of complaints

Category C relates to a set of recommendations that target the EU Member State competent authorities, PSC authorities and the ILO.

Recommendation C1 – Enhance EU Member States' SRPS national reporting

The goal of this recommendation is to ensure that all stakeholders involved in the implementation of the MLC, 2006 are aware of the actions taken by the EU Member States to certify/ license or otherwise monitor the operations of EU-based SRPS. The recommendation is targeted for implementation by EU Member States' competent authorities. Under this recommendation a platform for standardised EU national reporting by maritime authorities of the RPS certification and monitoring procedures adopted in EU Member States, and lists of certified/ licensed/ otherwise regulated SRPS would be developed.

The recommendation is designed to address the lack of awareness by PSC and RO inspectors of the certification and monitoring procedures and process that have been adopted in each ratifying (and EU) State, and of the RPS operations that have been certified at a national level.

Recommendation C2 – Development of a comprehensive overall database of MLC compliance data (“MLC Reportnet”)

This recommendation is directed towards the ILO and CEACR and proposes the development of a comprehensive database of inspection findings (from all sources including, but not limited to, PSC and MOU inspections), seafarers’ complaints and other relevant operational findings from all appropriate sources.

This recommendation would go towards addressing the challenge that information is currently provided as distinct “silos” from ILO, PSC inspections, MOUs, seafarers' trade unions and shipowners’ own complaints procedures (where published), but no comprehensive single compilation of all relevant materials exists. This prevents overall analysis of information and trends from being easily determined.

Prior to implementing this recommendation the study team proposes that a survey to be undertaken in order to determine the elements missing from current sources of compliance data and to determine which sources need to be integrated into the “MLC ReportNet”, as well as where necessary data elements are not being collected.



Recommendation C3 – MLC inspectors training (CBT)

Recommendation C3 proposes the development of enhanced MLC inspection training material in the form of a Computer- Based Training (CBT) module designed to support PSC and other MLC inspectors. The projected solution would be a dynamic system, based on test-case inspection examples that would be updated on a regular basis, and could include a self-assessment mechanism. This recommendation would ensure consistency of the MLC, 2006 inspection procedures world-widely, and provide specific guidance on elements of the inspection process that are difficult to assess, e.g. the obligations of SRPS and social security provisions. The recommendation is targeted at Member States and National Port State control authorities.

One task that is proposed prior to the implementation of this policy would be to undertake a survey among PSC officials and other authorities involved in MLC inspections to determine the elements missing from current training materials.

Recommendation C4 – New inspection regime for SRPS

This final category C recommendation relates to the establishment of a new inspection regime for SRPS, within and outside the EU, similar to the internationally based system of compliance applicable to the STCW Convention. The study team proposes the establishment of a bilateral (EU MS to third countries) regime for inspections of SRPS.

This recommendation is proposed to address the lack of transparency as to the actual certification and compliance procedures in place in most States, and lack of knowledge of actions being taken in States to ensure SRPS compliance. The implementation of this recommendation is targeted at the LSS and EU competent authorities.

Prior to implementation of the recommendation the study team proposes that a survey should be performed among PSC officials, ROs and Member States' authorities involved in MLC inspections to determine the difficulties that are experienced in validating the operations of SPRS.

7.2.4. Category D - Forum for the promotion of bilateral/ multilateral agreements for seafarers' employment, social security and insurance coverage

Category D proposes further research and discussion at the national level.

Recommendation D1 proposes an initiative to provide the basis for the discussion (through an establishment of an international forum) among social partners (Flag and Labour States within and outside the EU, seafarers' trade unions, shipowners' associations) on possible bilateral or multilateral agreements for employment on EU flagged ships or for EU nationals working on EU or foreign flagged vessels. In addition, the proposed discussion forum would investigate the promotion of bilateral or multilateral agreements on social security, or alternative contribution-based systems and



coordination of insurance cover for seafarers working on EU flagged vessels and EU seafarers working on EU and foreign-flagged vessels.

The forum will discuss the feasibility of forming bilateral or multilateral agreements for employment within the EU States as well as between EU and non EU States. Employment terms and conditions with regard to length of contract, period of notice for early termination, repatriation and leave are to be examined with the participation of the relevant social partners. The forum will also examine the potentials of comprehensive social security coverage through bilateral, multilateral agreements or contribution-based systems⁸⁸. The forum will also examine a comprehensive system of protection (by way of insurance or an equivalent measure) with special interest on seafarers' compensation for ship's loss/ foundering, seafarers' compensation for monetary loss that they may incur as a result of the failure of SRPS/ relevant shipowners under SEA to meet their obligations to the seafarers.

This recommendation is being proposed to address the lack of national CBA in many LSS and other States, unclear social security cover for seafarers in comparison to national shore-workers, foreigners working on national-flagged ships and nationals working on foreign-flagged ships. Also, a lack of comprehensive insurance coverage for monetary loss and, ship's loss/foundering was identified. Further, there is often limited transparency from the point of view of the seafarer as to the relationship between the seafarer and the other signatory parties to the SEA.

This recommendation would target and involve in the proposed discussion forum, representatives from Flag States, Labour Supplying States, Social Partners (shipowners' associations and seafarers' trade unions), as well as MLC and social security experts.

A prior research activity to support this recommendation would be undertaking extensive research on the existing social security systems of Member States; research on the coordination of social security systems in the EU and international level; focused research on issues that are to be covered by insurance of seafarers; examination of Member States' compliance with the MLC, 2006 Amendments on seafarers' abandonment to be implemented.

Each of the above policy recommendations is described in further detail in Annex VI – Policy Recommendations.

⁸⁸ Following Standard A4.5 §3 of the MLC, 2006 and International Labour Standards Department (2012), p.11.



7.3. Building on the methodology and results of this study

It is further envisaged that certain of the policy recommendations could, where appropriate, utilise and further develop the data management and content components that have been developed during this study.

For example, Policy Recommendation B2 relating to an electronic "MLC Sourcebook" could utilise the format and current content of the Country Profiles (Study Annex III) developed by the contractor to better understand and document the level of MLC, 2006 implementation in the targeted States.



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9. Annexes (Provided as a separate document)

- 9.1. Annex I - Data Supporting Study Findings**
- 9.2. Annex II - Stakeholder Consultations**
- 9.3. Annex III - Country Profiles**
- 9.4. Annex IV - Detailed Results of Seafarer Survey**
- 9.5. Annex V - Implementation Workshop Materials**
- 9.6. Annex VI - Policy Recommendations**



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