WORLD MARITIME UNIVERSITY

CHARTING THE DISTINCT RIGHTS OF SEA WORKERS IN EUROPEAN WATERS

A FOCUS ON DECENT WORKING TIME

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Charting the distinct rights of sea workers in European waters – A focus on decent working time

Everything that needs to be said has already been said.
But since no one was listening, everything must be said again.

André Gide, Literature Nobel Prize, 1947

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Introduction

1.1 Purpose and scope

Despite being essential to food security and trade, shipping and fishing evolved as 'a distinct society'[1] governed by its own rules and practices. Maritime labour law is no exception to this historical move. Rooted in ancient maritime customary law, maritime labour law excluded seafarers and fishers (hereinafter referred to as 'sea workers') from standard labour protections applied ashore.

Cultivating maritime specificities, regulations enact distinctions through a specialised legal framework, often downgrading sea workers' rights relative to those of land-based workers. The dedicated maritime governance within the International Labour Organization (ILO) and the International Maritime Organization (IMO) further institutionalised this sectoral isolation, normalising labour rights differentiation.

Notably, within international law, the differentiated and comparatively diminished status of seafarers' rights is likewise reflected in European Union (EU) law. In this respect, several EU directives exclude seafarers (or fishers or both) from common labour laws, such as the Posting of Workers Directive, thereby creating a breach of the fundamental legal principles and shared values claimed by the EU.

The differentiated treatment downgrades sea workers' protections compared to land-based workers without any legal or moral justification.[2] As claimed by another study, 'There are (…) no legal obstacles to the introduction of a system that ensures fair working conditions within the European Maritime Space. […] Neither are there practical hindrances to the inclusion of the provision of maritime services in the European Pillar of Social Rights.'[3]

In short, maritime exceptionalism perpetuates ancient practices that prioritise the sector's interests over protecting sea workers.

The study is primarily driven by the differential treatment of sea workers compared with land-based workers, which has resulted in their exclusion from several EU directives and in working and living conditions that fall below general labour standards.[4] After a general overview of EU labour law, the study examines working time regulations in-depth because this aspect presents a wide gap between sea workers and others.

1.2 Report structure

The document contains three distinct reports:

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[1] See R. Baumler and M. Carrera-Arce, "Suicide at sea: navigating in restricted visibility," *Maritime Studies*, vol. 24, no. 42, 2025. doi: 10.1007/s40152-025-00422-3

[2] Irrespective of workers' nationality and/or place of residence.

[3] See F. Arnesen and T. Bekkedal, *Fair wage and working conditions within the European Maritime;* Scandinavian Institute of Maritime Law, Centre for European Law, University of Oslo, 2019.

[4] The European Maritime Space for Socially Sustainable Shipping concept by ETF (2023) describes the existence of working and living conditions and rights and payments for seafarers that are substandard compared to those specified by EU Law and/or EU-based collective agreements as a clear case of Social Dumping: https://www.etf-europe.org/wp-content/uploads/2019/11/FairShippingConceptNoteFinal_All.pdf

- The Report 1 '**Social rights of sea workers in European waters – A Legal study**' discusses sea workers labour regulations in Europe, including cross-sectoral and sector-specific instruments. (pp. 11-68)
- The core of Report 2 '**Ensuring decent working time for the future – Seafarers under EEA and non-EEA flags**' analyses flags State working-time requirements in the EEA and selected non-EEA jurisdictions. (pp. 69-130)
- The Report 3 '**A working time comparative analysis – Examples of labour gaps between sea and land workers**' explores in depth working time between sea workers and other occupational groups, along with a discussion on social dialogue on the topic. (pp. 131-209)

1.3 Report summary

1.3.1 Report 1: The Fragmented Legal Framework for Sea workers in EU Labour Law

The legal position of seafarers and fishers within the European Union's labour framework is marked by complexity and uncertainty. While these workers are covered by sector-specific directives implementing ILO conventions (MLC, 2006 and C188), their relationship with cross-sectoral EU labour instruments is inconsistent, often leading to exclusion and a protection gap. The legal study argues that the international nature of the shipping industry has rendered traditional legal concepts obsolete, requiring a critical reassessment of how jurisdiction and applicable law are determined for sea workers.

- **The problem of definition and exclusion**

A foundational issue is the imprecise use of terms like 'seafarer' or 'fisher,' which fails to account for the diverse jobs and working arrangements on board vessels. This lack of clarity, combined with the fact that some exclusions from EU directives are not aligned with ILO standards or national practices, means that many sea workers are partially or totally excluded from the protective scope of general EU labour law.

- **The inadequacy of the flag State principle**

The traditional public international law principle, which grants jurisdiction to the flag State, is no longer fit for purpose in the context of private employment disputes, particularly with the rise of open registers. In the EU, private international law now governs these matters, prioritising the 'proximity principle' to connect the case with the most closely related legal system. For individual employment contracts, this is determined by the worker's 'habitual place of work.' Crucially, the Court of Justice of the European Union has moved away from equating the flag State with this place, instead building a circumstantial test to identify the country from which the worker habitually performs their duties for the employer.

- **Complexities in access to justice and applicable law**

While EU regulations (Brussels I Recast and Rome I) aim to protect workers by directing them to their habitual workplace, this system breaks down for seafarers. The highly internationalised nature of their work makes the 'habitual place of work' difficult to pinpoint, and the factors in the test can be easily manipulated by employers. This uncertainty undermines predictability and legal certainty. Furthermore, while workers can sue employers in the courts of the employer's domicile, this forum may be geographically and financially inaccessible. The text suggests a need to reconsider jurisdictional rules to offer sea workers a court closer to their home.

- **The limited role of overriding mandatory rules**

Protection may be salvaged through 'overriding mandatory rules'—fundamental provisions of a country's legal system (e.g., minimum working conditions) that apply regardless of the law governing the contract. However, their application is limited, as it depends on the EU Member State where the claim is brought. The EU's Posted Workers Directive (PWD), which contains a list of such protective conditions, could serve as a model for harmonisation, but seafarers are currently excluded from its scope.

- **The case for revisiting the posted workers directive**

The exclusion of seafarers from the PWD is particularly striking given that road transport workers, who face similar challenges in determining their workplace, are included. If the specific directive designed to manage the posting of transport workers proves effective, the case for extending similar protections to seafarers should be urgently revisited to close the current protection gap and ensure they are not left behind in the EU's social agenda.

In essence, the existing EU legal framework fails to provide sea workers with the clarity and access to justice afforded to shore-based workers, necessitating a reform that acknowledges the unique, transnational nature of their employment.

1.3.2 Report 2: The Erosion of Flag State Authority in Enforcing Seafarers' Working Time

While international law, particularly the Vienna Convention and the Maritime Labour Convention (MLC, 2006), firmly establishes flag States as the primary enforcers of treaty obligations (such as seafarers' working hours), research indicates that this authority is being systematically eroded. A combination of industry influence and practical implementation failures has led to the normalisation of excessive working hours at sea, creating a significant gap between legal commitments and onboard reality.

The text argues that regulatory practices are shaped by a deep integration of industry interests, contributing to a *status quo* of very long working hours. This occurs through two primary mechanisms: the normalisation of poor standards and repetitive implementation enforcement failures.

- **The normalisation of poor standards and integration of employer interests**

Regulators have contributed to the problem by adopting the lowest acceptable international standards, which has socially normalised unsafe working hours and downgraded seafarers' conditions compared to shore-based workers. Furthermore, there is a neglect of established fatigue science, with regulators undervaluing the link between working time and human error. This approach is reinforced by an alignment with employers' perspectives, where principles like 'competitiveness' and 'legislative ease' are prioritised over the regulations' core purpose: protecting seafarers' health, safety, and work-life balance.

- **Critical implementation and enforcement failures**

Even existing, weak regulations are poorly enforced due to tangible resource constraints. Flag States report a lack of staff, time, and funding to conduct in-depth inspections, which allows malpractices to persist. This is compounded by weak feedback mechanisms; seafarers rarely file formal complaints, often due to overtime pay incentives that discourage reporting long hours. Without effective data on breaches, authorities are unable to take punitive action, such as withdrawing safe manning documents, allowing non-compliance to continue unchecked.

- **The path to reform**

Before any meaningful change can occur, the text highlights several points that must be integrated into the discussion. First, seafarers themselves often prioritise higher wages or shorter contracts over reduced working hours, creating a complex dynamic where overtime pay can incentivise overwork. Second, while some flag States are open to change, they stress that any new standards must be international to ensure a level playing field for all shipping nations. Finally, the unique pressures of short-sea shipping, with its frequent port calls, are identified as a specific area where compliance is most difficult and fatigue is most acute.

In essence, the traditional authority of flag States is being hollowed out by a combination of pro-industry regulatory bias and a lack of enforcement capacity, perpetuating a cycle where the law on the books fails to translate into decent working hours for seafarers.

1.3.3 Report 3: The Failure of Maritime Governance – A Systemic Gap in Working Time Protection for Sea Workers

A comparative analysis of sea-based and other workers in the EU/EEA reveals a profound and systemic gap in working-time protections. This disparity calls into question the capacity of international and EU maritime regulators to fulfil their mandate to protect sea workers. The evidence suggests that the current governance model, including its social dialogue mechanisms, is structurally aligned with industry interests, obstructing efforts to align maritime labour standards with those of other sectors.

- **Substandard regulatory framework**

Maritime labour standards remain significantly below those applied to other EU/EEA workers. The work/rest regimes permitted for seafarers and fishers -allowing for up to 91-hour workweeks- would be unacceptable in any shore-based sector or other transport modes. The EU has consistently aligned its maritime legislation with the least protective international standards, reinforcing a form of 'maritime exceptionalism' where operational considerations override established labour law principles and scientific evidence on fatigue.

- **Commercial interests over science and decent work**

Current working time regulations for sea workers prioritise sectoral and commercial interests over worker well-being. By legitimising 14-hour workdays, the framework structurally diverges from labour norms recognised for over a century. This preserves the *status quo* rather than incorporating ILO decent work standards or fatigue science recognised in other industries.

- **Alarming statistical evidence**

Available data paints a dire picture:

Seafarers' average weekly hours far exceed the 48-hour ILO decent work threshold, with peaks reaching 91 hours and higher.

This is a sector-wide structural issue, with nearly identical patterns across EU/EEA and non-EU/EEA flags, and among EU/EEA and non-EU/EEA nationals.

The yearly average working time for seafarers exceeds that of any other worker category in any EU/EEA country.

Fishers face even worse conditions, with studies showing 16-20/hour shifts and 85% of workers in some samples exceeding the 91-hour weekly limit, though data remains scarce, rendering the sector invisible.

- **Imbalanced social dialogue**

At the regulatory level, shipowners' interests dominate standard-setting, while seafarers' bargaining power is marginalised. At the operational level, companies commonly deny responsibility for violations, blaming crews instead. Minimum safe manning certificates are used to justify overwork, and breaches are normalised as 'operational necessities,' creating a system where workers bear full responsibility without influence over decisions affecting their health and safety.

- **Systematic tolerance of unsafe conditions**

Violations of rest-hour limits are not exceptional but routine features of ship operations. Understaffing, compressed schedules, and port demands routinely exceed crew capacity. Compensatory rest is used not as an emergency measure but as a structural workaround, concealing chronic fatigue risks and demonstrating a governance environment that accepts unsafe conditions.

- **Commercial priority over well-being**

The lack of effective fatigue-risk management, combined with insufficient crewing and unrealistic workloads, creates an environment where worker well-being and fundamental rights are consistently subordinated to operational demands. Other issues like unpaid overtime, misuse of cadets, and punitive responses to complaints reflect systemic disregard for seafarers' rights.

- **Governance failure undermining safety and decent work**

The interplay of permissive regulations, weak enforcement, and unbalanced social dialogue produces a regime that fails to protect workers while jeopardising safe ship operations. The system remains unable to address human factors, generating unsafe conditions and failing to respect human limitations.

In conclusion, decent working time standards have not permeated the occupational reality of sea workers. Unhealthy hours affect decision-making capacity, and no human-factors strategy in maritime can genuinely improve well-being without first ensuring decent working time as a foundational principle.

Social rights of sea workers in European waters[5] – A legal study

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[5] The European space is the main context of the project. However, as needed, countries from the EEA (e.g., Norway) can be also included when relevant information is extracted.

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Executive summary

The European Union (EU) is divided into 27 labour markets needing coordination. However, EU legislative competence is rather limited in labour and employment matters, although the European Pillar of Social Rights (EPSR) released in 2017 demonstrates the EU's full awareness of its role in promoting decent work. However, this Pillar remains a recommendation directed towards all Member States, issued under Article 292 of the Treaty on the Functioning of the EU (TFEU), and seeks common ground on which to build the necessary coordination among Member States to avoid market distortions and competition. The TFEU also supports a growing number of instruments in this field.

Some of these instruments are sector-specific, such as the directives containing the agreements on the implementation of the Maritime Labour Convention, 2006 (MLC, 2006), and the Work in Fishing Convention, 2007 (C188), among EU social partners, and are binding on all EU Member States. Others are cross-sectoral, such as directives on workers' information, consultation and participation rights, transparent and predictable conditions, or minimum wage. Despite being binding on Member States, all of them have to be incorporated into domestic legislation to the extent that they lay down minimum labour standards that need to be adapted to national practices. The ensuing legal divergence across the EU, with 27 different laws and regulations, along with the different types of EU instruments used for their harmonisation, raises two main questions:

1. Are sea workers subject to cross-sectoral EU instruments like any other workers?
2. Which one of the 27 legal systems (or any other in the world) would be applicable to sea workers' labour and employment disputes?

Exclusion of sea workers in EU labour law

- Following Directive (EU) 2015/1794, which amended directives that specifically excluded seafarers and/or fishers, it has become clear that cross-sectoral instruments apply to them unless expressly excluded, as in the EU Posted Workers Directive (PWD). More specifically, and as confirmed by the Court of Justice, the directives ordering the implementation of the MLC, 2006 and C188 do not prevent the application of other instruments that provide the same or better working and living conditions to sea workers.
- In line with this conclusion, the Transparent and Predictable Conditions Directive (EU) 2019/1152 and the Minimum Wage Directive (EU) 2022/2041 include sea workers. However, they expressly exclude them from some of the rights therein laid down. The justification for such exclusions is not convincing, as the reasons suggest that such provisions are already included in EU law implementing the MLC, 2006 or C188. On the one hand, the latter do not exclude other instruments from applying the standards included in the MLC; 2006/C188. On the other hand, the request for implementation to be found in the MLC, 2006/C188, can be fulfilled by the Member States themselves or by the EU, as regulations and directives are also Member States' legislation.
- Some of the provisions in the said EU directives that are not applicable to seafarers are found in the MLC, 2006's guidelines, which makes their exclusion more striking. By the same token, EU social dialogue should take these provisions into account when discussing EU labour law instruments.

Impacts of definition mismatch

- There is a mismatch between the concepts of seafarers and fishers as defined by the MLC, 2006 and C188, and the concept of worker used by EU law. The latter is restricted to cases

of subordination to the employer, while the former also covers self-employed workers and professionals.

- A restrictive determination of sea workers in EU law may affect their protection.
- Indeed, a seafarer is not only a worker with navigational skills; the category also includes anyone employed, engaged, or working in any capacity on board, such as in the hospitality or entertainment sectors. The EU-level provisions specifically targeting seafarers, such as those in the Minimum Wage Directive or their exclusion from the PWD, do not seem to take into account the variety of activities a seafarer might perform on board a vessel. Consequently, seafarers without navigational or engineering skills may be deprived of certain protections.

Implementation and enforcement of EU labour law

- With some exceptions, such as the Social Security Coordination Regulation, EU labour law is basically contained in directives that require implementation at the Member State level. They have some flexibility in their implementation, but they should comply with their material, territorial and temporal scope of application. Implementation should thus include seafarers and fishers if they are not specifically excluded from the directive's scope of application. The question of EU law's territorial reach varies, nevertheless, depending on whether its provisions are classified as a public or a private matter:
- Should it be a public matter, such as occupational health and safety, the territoriality principle applies, basically covering workplaces in the countries' geographical reach, including ships registered in their territory, in line with the flag State principle as enshrined in public international law. However, the relevant instrument might apply extraterritorially, as the Social Security Coordination Regulation illustrates by submitting the case of a seafarer working on board a ship flying the flag of a third country for an employer seated in an EU Member State to the social security scheme of the EU Member State in which (s)resides.
- Should it be a private matter, such as wages or contract duration, a conflict rule mediates the issue by pointing to a relevant law, which can be that of a Member State or not, including the directive's provisions. Accordingly, the application of EU law, as implemented in domestic law, depends on whether the relevant conflict rule designates it. Relevant at this point is that the flag State principle does not play a role in this field. These issues are excluded from the concept of 'social matters' in Article 94 of UNCLOS.
- Enforcement of EU labour law through State inspections on board ships is primarily a flag State responsibility. Port state jurisdiction and control are fundamentally linked by, and basically limited to, treaty provisions. Accordingly, PSC operates only to examine compliance with the MLC, 2006's requirements (regulations and standards), not their implementation in any national law, which clearly undermines its scope. Labour inspections overlap with flag State inspections, but they can go beyond workplace inspections by addressing issues such as social security contributions or contract duration. Thus, other countries than the flag State can inspect these matters (such as the seafarer's country of residence).

Access to justice

- Individual employment contracts are primarily subject to the jurisdiction of the worker's habitual place of work. Considering that sea workers usually work across jurisdictions and in non-sovereign areas, it was assumed that their habitual workplace was in the flag State. However, the internationalisation of the maritime labour market and the proliferation of flags of convenience have ended this equation. According to the EU Court of Justice, the habitual

workplace of transport workers is located in the country *from which* they habitually provide their services towards their employer.

- The determination of such a country is subject to a circumstantial test which requires the examination of a number of factors on a case-by-case basis. Such an approach ensures that the closest jurisdiction to the employment relationship is applied, but it does not help predictability or legal certainty. Likewise, it does not take into account the collective dimension of the employment relationship, as each sea worker on the same vessel might be subject to a different legal system, making collective bargaining very challenging.
- The circumstantial test works well in the case of cabotage. The habitual workplace of a seafarer working on a ferry is the country from which (s)he carries out his or her transport tasks, receives instructions concerning his or her tasks and organises his or her work, and the place where his or her work tools are to be found. For example, the examination of these circumstances will determine whether UK or French law governs the individual employment agreement of a seafarer working on board a ferry operating between ports in the two countries, even in the event that the ferry is flying the flag of a third country.
- Access to justice in individual employment disputes is governed by the Brussels I Recast Regulation, which provides sea workers with several heads of jurisdiction. There are several protections in place, given that they are the weaker party to the contract and thus have limited bargaining power. Accordingly, they can agree with the employer, either expressly or tacitly, to submit their disputes to a court of justice, but only when they are fully aware of the consequences of such an agreement to ensure that it is concluded to their benefit. Should they not agree on one particular jurisdiction, they can sue their employer in the country where they habitually provide their services to their employers or in the latter's domicile.
- Hence, the uncertainties of the habitual workplace concept also affect their access to justice, punctuated by the fact that such a country might not be their country of habitual residence, thereby compromising their access to justice at the EU level. This issue could be solved by allowing sea workers to claim against their employers also in the country of their domicile. This head of jurisdiction would also help in cases where the employer is seated in a third country, and the ship is flagged in a third country as well.
- The law governing the individual employment contract can be the law chosen by the shipowner, and the seafarer, provided it does not deprive the latter of the protection granted by the otherwise applicable law, i.e., the law of the place from which work is habitually provided or another law which is closer than the latter to the employment relationship. It should be stressed again that none of these laws has to be the law of the flag State.
- Law selection is particularly complex for sea workers and is not guided by the worker protection principle. This further complicates their access to justice.
- In applying the law designated by the conflict rule (which might be a foreign law), courts and adjudicators have to give preference to their own country's overriding mandatory rules that embody fundamental values and principles such as the non-discrimination principle and occupational health and safety matters. While EU law can be a source of overriding mandatory rules, each Member State determines their own. The Posting of Workers' Directive includes a list of matters considered overriding mandatory (remuneration, contract duration, work and rest hours, holidays, non-discrimination, maternity protection, accommodation, food and catering, repatriation, and occupational safety and health) which could be used for reference in the maritime sector.

List of Acronyms

C188	Work in Fishing Convention, 2007
DMLC	Declaration of Maritime Labour Compliance
ECSA	European Community Shipowners' Association
EPSR	European Pillar of Social Rights
ETF	European Transport Workers' Federation
EU	European Union
FST	Federation of Transport Workers' Unions in the European Union
ILO	International Labour Organization
IMO	International Maritime Organization
MLC	Maritime Labour Convention
OSH	Occupational safety and health
PWD	EU Posted Workers Directive
TFEU	Treaty on the Functioning of the EU

1 Introduction

This report seeks to identify, select, and review documents associated with European Union (EU) labour regulations for sea workers.[6] The task implies that only EU instruments are covered by this report, in particular those dealing with sea workers.

Although pervasive, taking into account the application of the European Charter of Fundamental Rights in all EU Member States, EU law does not systematically deal with employment and labour matters; EU Member States are the primary lawmakers. Accordingly, there is no European Working Area but 27 labour markets which are coordinated by EU legislation and only to a certain extent harmonised via EU regulations and directives. Nevertheless, the EU is fully conscious of its role in promoting decent work, as evidenced by the release of the European Pillar of Social Rights (EPSR)[7] in 2017. However, this Pillar remains a recommendation addressed to all Member States issued under Article 292 of the Treaty on the Functioning of the EU (TFEU).

In dealing with employment and labour matters, the EU seeks to accomplish four main goals as detailed in Art. 9 TFEU: 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.' To this end, the free movement of workers is a key EU freedom as laid down in Arts. 45-48 of the TFEU, while the harmonisation of labour standards is mainly based on Art. 153 of the TFEU where the main priorities have been enumerated:

'(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;

(g) conditions of employment for third-country nationals legally residing in Union territory;

(h) the integration of persons excluded from the labour market, without prejudice to Article 166;

(i) equality between men and women with regard to labour market opportunities and treatment at work;

(j) the combating of social exclusion;

(k) the modernisation of social protection systems without prejudice to point (c).'

[6] Sea workers term include seafarers and fishers.

[7] The European Parliament, the Council and the Commission proclaimed the 'principles' of the EPSR at the 2017 Gothenburg Summit under three main sections: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. The European Commission set up the Action Plan for implementing the 'principles' in 2021://ec.europa.eu/social/main.jsp?catId=1226&langId=en

The development of labour policies lies in the hands of the EU Member States; however, the EU plays a critical supporting role, helping, in particular, to coordinate such policies. One key instrument to this end is social dialogue, which is supported at the EU level by the work of the Cross-industry Social Dialogue Committee and the Sectoral Social Dialogue Committees.

When it comes to sea work, their role has been pivotal in the making of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC;[8] and Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).[9]

In view of this legal framework, the following section (second section) will examine EU labour law, which includes not only the sector-specific directives mentioned above but also cross-sectoral regulations and directives applicable to all workers. However, this has not always been the case, at least until 2015 when Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers.[10]

In fact, although this exclusion has been reversed, maritime employment is still addressed separately in cross-sectoral directives, as will be discussed in this section.

Despite EU labour law, each State's legislation governs its own labour market, providing regulation of labour matters connected to its territory. Should the employment relationship be in contact with more than one country, one legal system should be determined as the only one governing it for the sake of legal certainty and predictability. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I),[11] and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II),[12] provide for such rules. They apply regardless of the type of worker, for which reason the third section will, first, describe how these rules on employment matters work, and the fourth section will, second, apply such rules to the case of transport workers. As mobile workers in contact with many countries and even non-sovereign areas, their case is particularly complicated when it comes to determining which law is closest to their employment relationship. This is in fact the reason why Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the

[8] OJ [2009 L 124/30.

[9] OJ [2017] L 25/12.

[10] OJ [2015] L 263/1.

[11] OJ [2008] L 177/6.

[12] OJ [2007] L 199/40.

framework of the provision of services[13] (hereafter PWD) in view of the difficulties in establishing their habitual place of work and thus whether they are temporarily displaced or not, as will also be discussed in section fifth.

[13] OJ [1997] L 18/1.

2 EU labour law

2.1 EU and ILO Conventions on maritime employment

Maritime employment has been the subject matter of specific EU legal instruments in line with the peculiarities of work at sea, but has mostly been driven by adherence to the International Labour Organization (ILO) Conventions and the need for coordination of their implementation at the EU level. This is the case of both Directive 2009/13/EC and Council Directive (EU) 2017/159, which are the outcome of EU social dialogue and the agreements made to implement the Maritime Labour Convention, 2006 (MLC, 2006) and Work in Fishing Convention, 2007 (C188), respectively. The former is in fact accompanied by two other directives which address flag State responsibilities and port State obligations for the Member States in accordance with the MLC, 2006, in particular Title 5 thereof: Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006;[14] and Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control.[15]

Directive 2009/13/EC has also amended Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organization of working time of seafarers concluded by ECSA and the Federation of Transport Workers' Unions in the European Union (FST).[16] The latter was released after the adoption of the ILO Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and the amendment is mainly in line with Regulation 2.3 on Hours of Work and Hours of Rest, but also covers Regulation 1.1 on Minimum Age and Regulation 1.2 on Medical Certificate of the MLC, 2006. Port State enforcement on the contents of this directive is facilitated by Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports.[17]

Seafarers' access to social security schemes is also covered by the MLC, 2006, which requests ratifying countries to provide them with at least three out of the nine social security branches. The EU does not directly address social security matters, but Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[18] is critical to determining which country should provide access to social security for EU-based seafarers. This regulation is not comprehensive, though, and co-exists with national coordinating rules, leaving some gaps which have been examined elsewhere [1], revealing a lack of information on these matters that seriously affects seafarers' rights.

Occupational safety and health (OSH) matters have also been targeted by EU labour law. In this vein, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work,[19] applies to both seafarers and fishers,

[14] OJ [2013] L 329/1.

[15] OJ [2013] L 218/1.

[16] OJ [1999] L 167/33.

[17] OJ [2000] L 14/29.

[18] OJ [2004] L 166/1.

[19] OJ [1989] L 183/1.

having been supplemented by Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels.[20] These provisions have been amended and are in line with Regulation 4.3 of the MLC, 2006.

Apart from these instruments, some directives used to exclude seafarers and/or fishers from their scope of application. This situation was reverted in 2015, as will be addressed in the next subsection. Prior to that, the Court of Justice had already concluded in a judgment of 3 July 2014,[21] dealing with the personal scope of application of Directive 1999/70/EC of the Council of 28 June of 1999 concerning the Framework Agreement of CES, UNICE and CEEP on fix-term employment,[22] i.e., whether seafarers are also covered by the measures included therein to avoid fraud by concluding fixed-term contracts instead of permanent employment. Remarkably, this judgment also considered Directive 2009/13/EC concerning the implementation of the MLC, 2006, which had been transposed in Italy in the Codice della Navegazione with provisions dealing with the seafarer's employment agreement, including termination. Although it was argued that the specificity of the latter would overrule the general directive, the Court of Justice replied that the following:

> However, it neither appears, nor has it been suggested, that the agreement on the MLC 2006, any more than other acts adopted by the EU legislature regarding the maritime sector, includes rules designed, in common with the Framework Agreement, to guarantee the application of the principle of non-discrimination as regards workers employed on fixed-term contracts or to prevent abuse arising from the successive use of fixed-term employment relationships or contracts. The agreement on the MLC 2006, as is apparent, in particular, from the third paragraph of its final provisions, applies without prejudice to any other provision in force in the European Union that is more specific or that offers a higher degree of protection to seafarers.[23]

Hence, it can be safely concluded that if an EU instrument does not explicitly exclude seafarers and fishers from its scope of application, they are included therein. This conclusion is reinforced by the fact that some directives covering all workers do contain specific provisions for seafarers, as will be discussed in the third subsection.

2.2 Inclusion of sea workers in cross-sectoral EU directives

Directive 2015/1794/EU[24] amended the scope of the following five EU/EEA labour law directives by including seafarers:

- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation[25]

[20] OJ [1992] L 113/19.

[21] CoJ 3 July 2014, Case C-362/13, C-363/12 and C-407/1, *Flamingo and Others*, ECLI:EU:C:2014:2044.

[22] OJ [1999] L 175/43.

[23] CoJ 3 July 2014, Case C-362/13, C-363/12 and C-407/1, *Flamingo and Others*, para. 36.

[24] OJ [2015] L 263/1.

[25] OJ [2002] L 80/29.

- Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)[26]
- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies[27]
- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses[28]
- Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer[29]

Seafarers and/or fishers were removed from the original directives seeking to avoid the re-flagging in open registries of the EU fleet. This exclusion was reviewed, taking into consideration that traditional maritime countries such as France and Spain decided not to exclude them while transposing these directives into national legislation, and, nevertheless, their fleet not only remained but also increased.[30] The 2015 directive puts seafarers and/or fishers on an equal footing with land workers, emphasising that there are no objective reasons for an exclusion that was depriving them of the full enjoyment to the rights to collective representation or assembly, information, consultation and participation in the activities of a company in line with Articles 27 and 31 of the European Charter of Fundamental Rights.[31] It also highlights that this amendment seeks to improve their working and living conditions with a view to increasing the attractiveness of the maritime sector, in particular for young people. The point is made that the number of EU seafarers has been steadily decreasing, with the sector facing labour shortages.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for the information and consultation of employees in the European Community aims to enhance social dialogue through promoting worker participation in the decisions affecting them in the company or business where they work on the basis that this strengthens employment opportunities, improves risk prevention and the organization of work and access to training, and reinforces company competitiveness. Given its comprehensive nature, the directive is not intended to impose its provisions upon ship companies but requires Member States to provide an equivalent level of protection. Thus, national law leaves a certain amount of leeway to adapt itself to the peculiarities of work at sea, particularly with regard to communications between the company and the crew of a seagoing ship.

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[26] OJ [2009] L 122/28.

[27] OJ [1998] L 225/16.

[28] OJ [2001] L 82/16.

[29] OJ [2008] L 283/36.

[30] See Commission Staff Working Document on Impact Assessment [SWD(2013) 462 final], spec. p. 12 suggesting some reasons for justifying these exclusions, in particular the mobile nature of ships and communication problems. See also 2015/1794/EU, Recital 5.

[31] Directive 2015/1794/EU, Recital 4.

The Information and Consultation of Employees Directive's general scope has led to explicit declarations of its complementary nature *vis-à-vis* to other directives, including those arising from **Directive 2009/38/EC of the Council of 22 September 1994** on the establishment of a European Works Council, and on the procedure for informing and consulting employees in undertakings and groups of undertakings with an EU dimension. The latter applies to shipping companies with a thousand or more workers and at least a hundred and fifty workers in one or more of the Member States where they operate. Other relevant provisions on the information, consultation and participation rights of workers are contained in EU law dealing with the *societas europaea*[32] and the European cooperative company.[33] None of those instruments did exclude shipping or fishing companies from their scope of application, and thus, sea workers were already covered by those provisions, including their involvement in the establishment of such particular companies.[34]

Article 2 of the Collective Redundancies Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 requires employers to accept certain information and consultation obligations as regards to workers' representatives. The aim is to conclude agreements that prevent or at least reduce redundancies and mitigate their consequences, for example, by adopting social measures such as the redeployment or retraining of dismissed staff Members. Directive (EU) 2015/1794 put an end to the exclusion of workers on seagoing vessels from the benefits of these provisions, which should have proven relevant in cases such as that of P&O Ferries, where over 800 employees were dismissed and immediately replaced by inexperienced and lower-paid crew members without respecting consultations with workers' representatives. Remarkably, this directive was also amended in 2015 to require the employer to provide the public authority of the flag State with notice of any proposed collective dismissals, including details of consultations with workers' representatives, taking stock of the fact that employment contracts might be subject to different laws.[35] This notice must specify 'the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.'[36] In the said case, such a notice was given to Cyprus, the competent flag authority, but not to the UK authority, the country where the affected ferries were operating.

The information and consultation procedure with workers' representatives in the event of the transfer of a company has been harmonised at the EU level in order to safeguard jobs and enhance the protection of workers' representatives should their period in office expire with the transfer. As with the Collective Redundancies Directive, seafarers were excluded from the scope of the **Transfer of Undertakings Directive of the Council of 2001/23/EC of 12 March 2001,** an omission corrected by Directive (EU) 2015/1794 which also amended it to include provisions on these rights' interaction with the market for the sale of ships because selling the ship with the crew would amount to a

[32] Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) *(*O.J. [2001] L 294).

[33] Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (*O.J. [2003] L 207).*

[34] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (*O.J.* [2001] L 294), and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (*O.J. [2003] L 207).*

[35] See COM(2013)798 final of 18.11.2013, p. 10.

[36] Collective Redundancies Directive, Article 3(2).

significant discount on the final price of the ship.[37] Accordingly, the directive does not cover the case of a transfer of just one or more seagoing vessels, i.e., it only applies to the transfer of an undertaking, business or part of an undertaking or business as a result of a legal transfer or merger provided that the transferee is situated, or the transferred undertaking, business, or part of an undertaking or business remains, within the territorial scope of the EU.[38] This treatment is ultimately justified with the aim of preventing the Directive's implementation from discouraging owners from registering their ships in EU Member States, and therefore to avoid a possible flight to flags of convenience.

Workers' rights to information, consultation and participation are supra-individual rights and these directives (except for Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer which establishes a number of guarantees to ensure workers' payment in this situation) address them procedurally and substantially but not geographically, i.e., not indicating which is their territorial scope of application and thus this issue is left open to each country to decide while transposing them into national legislation. The point is nevertheless important because, while in principle all sea workers should be covered by these rights, administrative compliance and enforcement thereof are not guaranteed when their workplace might not coincide with the country where the employer is seated, or even where they reside. The implementation of the Collective Redundancies and Transfer of Undertakings Directives confirms the lack of harmonisation on this point.

The *Report From The Commission To The European Parliament And The Council on the implementation and application of Articles 4 and 5 of Directive (EU) 2015/1794* [COM(2024) 291 final] [2] shows that EU/EEA Member States have resorted to a variety of alternatives when it comes to determining the competent authority to report the intention to collectively make workers redundant. While some Member States already covered seafarers and fishers within the Collective Redundancies Directive and do not need to amend their legislation, thirteen countries did so, of which three copied the reference to the flag State without further localization factors and ten opted for different solutions which either focus on EU/EEA flag States or point to other authorities in addition to flag States, in particular when seafarers and fishers affected are from their own country. In view of the P&O Ferries case, the solution provided in the directive seems to be insufficient and should be supplemented as done by some Member States: while Cyprus was notified as the flag State, the dismissals affected 800 employees based in the UK which would have benefitted from the surveillance of the UK competent authority and in particular, from the 30-day-period notice in advance to undertaking the redundancies.

The application of the Transfer of Undertakings Directive could be restricted to transfers of seagoing vessels if the buyer is seated in the EU or if the transferred undertaking remains in the territorial scope of the Treaties. In accordance with the Commission's report [COM(2024) 291 final] [2], fourteen Member States have followed these restrictions to the EU/EEA territory, while the remaining three, having to bring their legislation in line with the amended directive, focus on their own country with the case of Cyprus limiting the scope of application to Cypriot seagoing vessels. The remaining fourteen Member States did not limit the territorial scope, resulting in broader protection for sea workers.

[37] See Commission Staff Working Document on Impact Assessment [SWD(2013) 462 final], pp. 45-46.

[38] Directive 2001/23/CE, Article 1(3).

The convergence of interests that is discernible behind workers being granted information, consultation and participation rights has traditionally justified the determination of the law governing them in accordance with the principle of territoriality, i.e., covering employers and employees based in the same country, because these rights are ultimately rooted in social and competition policies.[39] This approach is the one so far taken, considering how the said directives have been implemented in EU national states. However, companies' current transnational character and the fact that workers are frequently posted abroad seem to require a new approach that has not yet been developed transnationally. To this end, some considerations can be made.

The supra-individual dimension of these rights places them outside the scope of application of the Rome I and Rome II Regulations, since they are neither contractual nor non-contractual obligations. In some countries, they are contained in collective agreements, and it has therefore been suggested that they should be decided in accordance with the law applicable to the latter. This submission is not acceptable though, since collective representation and participation obligations are characterised by their application to all staff Members indiscriminately, and collective agreements are not necessarily binding on all workers in the same workplace. The proposal to link these rights to the law governing employment contracts is not acceptable either for the same reasons [3].

Workers' rights to participate in the businesses' decision-making are not particularly problematic to the extent that they imply involvement in management bodies and thus, they depend on the law governing the relevant business. As for rights to information and consultation, the law of the workplace where they are to be effected is advocated [4:478-487], which would also cover workers temporarily posted abroad [4:488-492]. German law has a specific provision for maritime and fishing companies, which establishes its application when the company's headquarters are in Germany, and all the company's ships fly the German flag.[40] Problems inevitably arise when ships fly a different flag, which, in turn, does not match that of the country where the company is based, to which the existing problems raised by flags of convenience are added. Against this backdrop, the law of the company's headquarters has been proposed in its place [4:485-486]. The approach taken by the Collective Redundancies Directive differs from the latter by requiring that the company's intentions be communicated to the 'competent authority', which, in the case of shipping and fishing companies, would be that of the flag State. However, cases such as the P&O Ferries one suggests to a business-centred approach that takes into consideration the basis for these rights rooted in the need of securing that social considerations are taken in business decision-making. Accordingly, prominence should be given to the company's place of business or centre of effective administration. This should replace the flag State unless this country is also the country of the employer, and apply regardless of the location of the company to which the business is transferred.

2.3 Cases in which sea workers are excluded from the ordinary application of EU labour law

2.3.1 The case of providing transparent and predictable working conditions

Chapter II of the EPSR is devoted to fair working conditions, such as secure and adaptable employment (Principle 5) and information about employment conditions and protection in dismissals (Principle 7). With both principles in mind, the European Commission presented a proposal for a

[39] See, for example, BAG 20.2.2001 - I ABR 30/00, *IPRspr*., 2001, Nr. 48.

[40] See § 114 *Betriebsverfassungsgesetz*, and F. Eßlinger, *op. cit.*, pp. 145-146.

Directive on transparent and predictable working conditions in the European Union that would repeal Directive 91/533/EC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (the Written Statement Directive), finally approved as Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019.[41]

Prior to the release of Directive (EU) 2019/1152, the European Commission commissioned a Study to Support Impact Assessment on the Review of the Written Statement Directive,[42] according to which at least 14 countries decided to exclude some workers from this directive's scope of application being domestic workers, employer's family Members and seamen among those regularly excluded (EC, 2017, 50). Likewise, the world of work has experienced significant changes with the rise of new and atypical forms of work that were not sufficiently protected by the former directive [5], making an update compelling. More specifically, amendments were pursued as regards to the notification period in view that the two-month one prescribed in the former directive increased the chances of undeclared work and abuse of employee rights; as regards to the enforcement mechanisms which were mainly lacking not having the old directive contemplated either alternatives for the worker or sanctions to the employer; and concerning the information package which was insufficient as established in the Written Statement Directive [6:193].

All the above-mentioned issues have been tackled in the Directive on Transparent and Predictable Working Conditions, which also includes seafarers and fishers in its scope of application. However, they have been excluded from the application of a number of critical provisions on account of 'the specific nature of the sector regulated by sectoral legislation' in the words of the EU Council which successfully objected on this point to the European Commission's proposal. More specifically, the obligations laid down in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 do not apply to them.

In accordance with Article 4(2)(m), the employer must inform the worker of a number of issues whenever the work pattern is entirely or mostly unpredictable, as is usually the case with seafarers and fishers, while letter (o) addresses the cases in which it is complex to establish which social security system would cover the worker. Table 1 identifies which provisions in the MLC, 2006, that have been incorporated into the EU Member States via Directive 2009/13/EC can be considered equivalent to those in Article 4(2)(m) and (o). In doing so, it can be learnt that all rights are covered by the MLC, 2006. However, while some are contemplated in a mandatory standard, others are included in guidelines that are not mandatory, although Member States to the MLC, 2006are expected to pay due consideration to them (see Article V of the MLC, 2006). The fact that this directive excludes seafarers from Art. 4(2)(m) is a missed opportunity to ensure that seafarers enjoy the rights embedded in the relevant guidelines.

[41] OJ [2019] L 186/105.

[42] Study to Support Impact Assessment on the Review of the Written Statement Directive. Directive 91/533/ECC – LOT2. Final Report, 19 December 2017, available at: <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9297#navItem-relatedDocuments>

Table 1. Equivalence between Art. 4(2) Directive on Transparent and Predictable Working Conditions (2007/13/EC) and MLC, 2006 provisions

Art. 4(2) Directive on Transparent and Predictable Working Conditions	**MLC, 2006**
(m)if the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of: (i)the principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours; (ii)the reference hours and days within which the worker may be required to work; (iii)the minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation referred to in Article 10(3);	Standard A2.1, para. 4: (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them; Guideline B2.2.2, para. 1: For seafarers whose remuneration includes separate compensation for overtime worked: ▪ (a) for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day; ▪ (b) for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages should be prescribed by national laws or regulations, if not determined by collective agreements, but should not exceed 48 hours per week; collective agreements may provide for a different but not less favourable treatment; ▪ (c) the rate or rates of compensation for overtime, which should be not less than one and one-quarter times the basic pay or wages per hour, should be prescribed by national laws or regulations or by collective agreements, if applicable; and ▪ (d) records of all overtime worked should be maintained by the master, or a person assigned by the master, and endorsed by the seafarer at no greater than monthly intervals. Standard A2.3, para. 3: Each Member acknowledges that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis no less favourable than this standard. Standard A2.1, para. 4:

	(g) the termination of the agreement and the conditions thereof, including: ▪ (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer; ▪ (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and ▪ (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged Standard A2.4, para. 5: Each Member shall adopt laws or regulations establishing minimum notice periods to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organizations concerned, but shall not be shorter than seven days.
(o) where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.	Standard A2.1, para. 4, (h) the health and social security protection benefits to be provided to the seafarer by the shipowner; Guideline B4.5, para. 6: The seafarers' employment agreement should identify the means by which the various branches of social security protection will be provided to the seafarer by the shipowner as well as any other relevant information at the disposal of the ship owner, such as statutory deductions from the seafarers' wages and shipowners' contributions which may be made in accordance with the requirements of identified authorized bodies pursuant to relevant national social security schemes

More specifically, Guideline B2.2.2 provides significant details as to how to calculate wages for seafarers taking into account that their work pattern is mostly unpredictable while Guideline B4.5 indicates that countries should request shipowners to provide for the details of the relevant social security system in which seafarers are admitted to taking into account that Standard A2.1 of the MLC, 2006 dealing a seafarer's employment agreement does not list this as a particular to be mandatorily included therein [1]. Both guidelines would be in line with Article 4(2) (m) and (o) of Directive on Transparent and Predictable Working Conditions, and while it could be said that they justify the exclusion of seafarers from the application of this provision, the fact that they are guidelines and thus not mandatory would have justify just the opposite, strengthening the adoption of these guidelines into national legislation.

As mentioned above, the Directive on Transparent and Predictable Conditions excludes seafarers from Articles 7, 9, 10 and 12, on the basis that the MLC, 2006 might also cover them. However, that is not the case in all situations, as follows (Table 2).

Table 2. Equivalence between Art. 4(2) Directive on Transparent and Predictable Working Conditions (2007/13/EC) and MLC, 2006 provisions

Directive on Transparent and Predictable Working Conditions	**MLC, 2006**
Article 7 **Additional information for workers sent to another Member State or to a third country** 1. Member States shall ensure that, where a worker is required to work in a Member State or third country other than the Member State in **which he or she habitually works**, the employer shall provide the documents referred to in Article 5(1) before the worker's departure and the documents shall include at least the following additional information: (a)the country or countries in which the work abroad is to be performed and its anticipated duration; (b)the currency to be used for the payment of remuneration; (c)where applicable, the benefits in cash or kind relating to the work assignments; (d)information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation. 2. Member States shall ensure that **a posted worker covered by Directive 96/71/EC** shall in addition be notified of: (a)the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State; (b)where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging; (c)the link to the single official national website developed by the host Member State pursuant to Article 5(2) of **Directive 2014/67/EU** of the European Parliament and of the Council. 3. The information referred to in point (b) of paragraph 1 and point (a) of paragraph 2 may, where appropriate, be given in the form of a reference to specific provisions of laws, regulations and administrative or statutory acts or collective agreements governing that information.	Regulation 2.1 and Standard A2.4 on Seafarers' Employment Agreement Para. 2, (i) the seafarer's entitlement to repatriation; Standard A2.2, para. 2: Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to. Regulation 2.5, Standards A2.5.1 and A2.5.2, and Guidelines B2.5 on Repatriation

4. Unless Member States provide otherwise, paragraphs 1 and 2 shall not apply if the duration of each work period outside the Member State in which the worker habitually works is four consecutive weeks or less.	
Article 9 **Parallel employment** 1. Member States shall ensure that an employer neither prohibits a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subjects a worker to adverse treatment for doing so. 2. Member States may lay down conditions for the use of incompatibility restrictions by employers, on the basis of objective grounds, such as health and safety, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.	
Article 10 **Minimum predictability of work** 1. Member States shall ensure that where a worker's work pattern is entirely or mostly unpredictable the worker shall not be required to work by the employer unless both of the following conditions are fulfilled: (a)the work takes place within predetermined reference hours and days as referred to in point (m)(ii) of Article 4(2); and (b)the worker is informed by his or her employer of a work assignment within a reasonable notice period established in accordance with national law, collective agreements or practice as referred to in point (m)(iii) of Article 4(2). 2. Where one or both of the requirements laid down in paragraph 1 is not fulfilled, a worker shall have the right to refuse a work assignment without adverse consequences. 3. Where Member States allow an employer to cancel a work assignment without compensation, Member States shall take the measures necessary, in accordance with national law, collective agreements or practice, to ensure that the worker is entitled to compensation if the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker.	

4. Member States may lay down modalities for the application of this Article, in accordance with national law, collective agreements or practice.	
Article 12 **Transition to another form of employment** 1. Member States shall ensure that a worker with at least six months' service with the same employer, who has completed his or her probationary period, if any, may request a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply. Member States may limit the frequency of requests triggering the obligation under this Article. 2. Member States shall ensure that the employer provides the reasoned written reply referred to in paragraph 1 within one month of the request. With respect to natural persons acting as employers and micro, small, or medium enterprises, Member States may provide for that deadline to be extended to no more than three months and allow for an oral reply to a subsequent similar request submitted by the same worker if the justification for the reply as regards the situation of the worker remains unchanged.	Standard A2.8, para. 1: Each Member shall have national policies that encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce. **Guideline B2.8.1 – Measures to promote career and skill development and employment opportunities for seafarers** 1. Measures to achieve the objectives set out in Standard A2.8 might include: (a) agreements providing for career development and skills training with a shipowner or an organization of shipowners; or (b) arrangements for promoting employment through the establishment and maintenance of registers or lists, by categories, of qualified seafarers; or (c) promotion of opportunities, both on board and ashore, for further training and education of seafarers to provide for skill development and portable competencies in order to secure and retain decent work, to improve individual employment prospects and to meet the changing technology and labour market conditions of the maritime industry.

Article 7 of the Directive on Transparent and Predictable Working Conditions deals with workers sent to another EU Member State or to a third country. This would fit the case of sea workers, but the reading of the provision reveals that it focuses on temporarily posted workers, even including a reference to PWD and to Directive 2014/67/EC on the enforcement of the PWD. The exclusion of seafarers would thus be appropriate to the extent that they are specifically excluded from the scope of these other two directives. **However, that is not the case of fishers making such an exclusion inconsistent with these directives.**

Moreover, Article 9 deals with parallel employment, which might not be indeed suitable for seafarers' and fishers' isolated work at sea. However, again, this provision excludes them without taking into consideration the fact that these are not monolithic professions; there are different types of seafarers and fishers, and some might be able to engage in parallel employment such as seafarers working on ferries or fishers on artisanal fishing. The same applies to the exclusion from Article 10 which focuses on minimum predictability at work and it is connected to Article 4(2)(m) to deal with workers who receive assignments in an unpredictable manner to guarantee certain working hours and the right of refusal.

Finally, Article 12 seeks to provide workers with a transition to another form of employment which more predictable and secure by entitling them to a request six months into their job. The reason for excluding sea workers is arcane to the extent that they would be also interested in fixed-term employment. This provision would also be an interesting opportunity to develop Regulation 2.8 and

Standard A2.8 of the MLC, 2006 on Career and skill development and opportunities for seafarers' employment.

2.3.2 Minimum wages

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union[43] has been delivered to comply with Principle 6 of the EPSR Action Plan which strives for adequate minimum wages and the establishment of a transparent and predictable wage setting framework respectful of national practice and based on collective bargaining with a view to enhancing the effective access of workers to minimum wage protection and thus contributing to upward social convergence and reducing wage inequality.

Having said this, Article 1.3 thereof makes it clear that

> In accordance with Article 153(5) TFEU, this Directive shall be without prejudice to the competence of Member States in setting the level of minimum wages, as well as to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both.

On the one hand, the directive acknowledges that the setting of a minimum wage at the EU level is neither feasible nor desirable to the extent that the objective is to ensure 'adequate minimum wages' for each socio-economic reality. On the other hand, the directive does not seek to change national systems in which some EU Member States opt for statutory minimum wages while others opt to include them in collective bargaining agreements.

This Directive applies to all workers, including fishers and seafarers. However, while fishers do not get special treatment as regards other workers, seafarers are singled out for reasons of compatibility with the MLC, 2006, as explained by Recital 20 thereof, which reads as follows:

> This Directive takes into account that, in accordance with ILO Maritime Labour Convention (2006), as amended, Member States who ratified that Convention are, after consulting representative ship-owners' and seafarers' organisations, to establish procedures for determining minimum wages for seafarers. Representative ship-owners' and seafarers' organisations are to participate in such procedures. In light of their specific nature, the acts of Member States resulting from such procedures should not be subject to the rules on statutory minimum wages set out in Chapter II of this Directive. Such acts should not interfere with free collective bargaining between ship-owners or their organisations and seafarers' organisations.

Accordingly, Article 1.5 of this Directive excludes seafarers from Chapter II on Statutory Minimum Wages, which is devoted to the establishment of a procedure for setting adequate minimum wages and refers their protection to collective bargaining at the ILO level as follows:

> The acts by which a Member State implements the measures concerning minimum wages of seafarers periodically set by the Joint Maritime Commission or another body authorised by the Governing Body of the International Labour Office shall not be subject to Chapter II of this Directive. Such acts shall be without prejudice to the right to collective bargaining and to the possibility to adopt higher minimum wage levels.

[43] OJ [2022] L 275/33.

This provision raises two questions. T**he first refers to their personal scope of application to the extent that the concept of seafarer** provided by the MLC, 2006 is not in line with the one used by the Subcommittee on Wages of Seafarers of the Joint Maritime Commission for the purpose of updating a minimum basic wage figure for 'able seamen' in accordance with the Seafarers' Wages, Hours of Work and Manning of Ships Recommendation, 1996 (No. 187), nowadays incorporated in Guideline B2.2 of the MLC, 2006. While this is the only statutory international wage fixing mechanism, it focuses on 'able seafarers' defined in Guideline B2.2.1 of the MLC, 2006 as 'any seafarer who is deemed competent to perform any duty which may be required of a rating serving in the deck department, other than the duties of a supervisory or specialist rating, or who is defined as such by national laws, regulations or practice, or by collective agreement', and thus excluding other seafarers who are employed, engaged or work in any capacity on board a ship. **The question is thus: what happens to seafarers who do not fit this definition?**

The second question refers to the issue of whether this exclusion was necessary, taking into consideration Guideline B2.2.3 on Minimum Wages:

> Without prejudice to the principle of free collective bargaining, each Member should, after consulting representative shipowners' and seafarers' organizations, establish procedures for determining minimum wages for seafarers. Representative shipowners' and seafarers' organizations should participate in the operation of such procedures.

This is thus a recommendation that cannot be used against legal systems which favour statutory minimum wages over their establishment via collective bargaining. It is not only that this is a guideline and not a mandatory provision. As Article VI.2 of the MLC, 2006 lays down, ratifying countries 'shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code', a mandate which is reiterated by Standard A2.2, para. 6 thereof. It is also that the wording of Guideline B2.2.3 covers the statutory minimum wage. provided that the procedure for their establishment and updating entitle representative organizations of shipowners and seafarers to participate, as it is the case in Spain, for example. **The question is thus why a directive which has been released on the basis of respecting national practice deviates from this principle in the case of seafarers.**

Moreover, the procedure for determining minimum wages for seafarers, and which Member States to the MLC, 2006 have to implement, should make sure that

> The basic pay or wages for a calendar month of service for an able seafarer should be no less than the amount periodically set by the Joint Maritime Commission or another body authorized by the Governing Body of the International Labour Office (Guideline B2.2.4, para. 1, of the MLC, 2006).

However, the said procedure should not only take into account this international agreement, but also 'the nature of maritime employment, crewing levels of ships, and seafarers' normal hours of work'; while 'the level of minimum wages should be adjusted to take into account changes in the cost of living and in the needs of seafarers' (Guideline B2.2.3. para. 2). Surprisingly though, Article 1.5 of the Minimum Wages Directive disregards all these aspects although it does acknowledge the possibility to adopt higher minimum wage levels. What is not surprising is that Chapter II thereof does refer to these principles while sketching what a procedure to set up minimum wages looks like.

2.3.3 Preliminary conclusions

EU labour law is basically made up of directives because the competence to regulate their labour markets remains in the hands of EU Member States. Hence, the EU seeks to harmonise these 27 labour markets by issuing directives that can provide a level playing field across the EU, although

each country remains entitled to enhance workers' rights while transposing them into its own legal system.

EU labour law usually targets all workers, with some exceptions. Seafarers and fishers have been excluded from a number of directives on account of avoiding the re-flagging of the EU Member States' fleet. However, this approach was successfully reviewed in 2015, after confirming that some EU Member States already provided these professionals with the rights included in such directives and there was no distortion of competition. Hence, in addition to Directive 2019/13/EC and Directive 2017//EC, which specifically focus on seafarers' and fishers' rights by requesting the implementation of the MLC, 2006 and C188, respectively, in all Member States, all cross-sectoral directives on labour standards apply to seafarers and fishers.

Remarkably, cross-sectoral directives might provide specific provisions on seafarers and fishers. While some of them deal with the particularities of the profession, others seem to use the MLC, 2006, as a reason for not placing seafarers and fishers on the same footing as other workers. The fear of flagging out seems to play an important role in this approach, which makes fair competition for shipowners prevail over ensuring decent working and living conditions for seafarers [8]. However, However, as the review of the impact of the 2015 amendments reveals, enhancing seafarers' rights does not lead to flagging out. To the contrary, maritime employment figures within the EU are those most adversely affected due to the worst conditions at sea compared to those on land.

The provisions from which seafarers are excluded are also controversial. First, because they do not take into account that seafarers and fishers are complex concepts which cover different types of jobs. Exclusions do not pay attention to their definitions and thus are inconsistent with the MLC, 2006 and C188. Second, some of these provisions refer to standards that are also contemplated in the MLC, 2006, but in their guidelines, i.e., they are not mandatory but strongly recommended for adoption by ratifying countries. Their inclusion in a directive would reinforce this message, triggering implementation by Member States.

3 Private international law and employment matters

3.1 Introduction

Labour and/or employment matters are handled by a specific field of law comprising both public and private legal rights and obligations arising from or in connection with employment relationships. In this vein, it not only deals with the conclusion and performance of an individual employment contract between employer and employee/worker, but also the workplace conditions and their occupational health and safety (OHS). The latter cannot be negotiated individually, and thus they are classified as matters of public law to the extent that they are intended to protect society at large from the legal consequences of occupational illness, injury, and accident at work. Against this backdrop, social security matters can also be included within the labour law field as a means to collectively address the aforementioned legal consequences of accidents at work, which otherwise would depend on the employer's economic stability. Other matters such as wages and working hours can be individually negotiated and are classified as private matters although they are also governed by mandatory provisions to make effective the worker protection principle.

The collective dimension of the employment relationship is critical to a legal field involving a weaker party to the individual employment contract, whose position is strengthened by collective bargaining. The significance of the freedom of association and the right to collective bargaining and to take collective action is acknowledged by the 1998 ILO Declaration on the Fundamental Principles and Rights at Work, and further developed by the ILO Fundamental Conventions on the Freedom of Association and Right to Organize, 1948 (No. 87), and the Rights to Organize and Collective Bargaining, 1949 (No. 98) which help guide their implementation at domestic level. Further collective rights include the right to information, consultation, and participation in company matters via work councils or other representatives. Moreover, worker protection measures are usually applied in the event of the transfer of a company as well as the employer's insolvency.

A variety of national provisions are thus applicable to legal disputes arising out of individual and collective employment relationships, making it necessary to differentiate among them in order to find the right legal answer. The appearance of a foreign element further complicates the provision of this answer by connecting two or more labour markets and thus different legal approaches to the same issues. Accordingly, it makes it necessary to establish which legal system will provide an answer to the relevant legal dispute. Such a foreign element can be the different nationality, domicile or habitual residence of the parties to the contractual or non-contractual matter, the location of the workplace or the provision of services abroad or in a stateless territory, or even the choice of a law applicable to the employment relationship other than that of the country where all their factual elements are located. Maritime employment is a case in point to the extent that there is more than one relevant foreign element in their relationships, namely, the employer's and employee's nationality, domicile or habitual residence might differ, the place of the ship's registration might be located elsewhere, or the vessel navigate on the high seas and across different jurisdictions, i.e., the crew provides services on board in different countries.

The determination of the applicable law in employment matters primarily depends on the type of legal problem, whether public or private. For example, should the matter refer to the workplace conditions, the issue is to be decided by the competent authority in accordance with its own law because of the public law nature of these provisions. Food and catering, and health and accident prevention rules, cannot be subject to party autonomy, but the governing provisions where the workplace is located will settle any relevant dispute. The legal rationale behind this approach lies in the principle of territoriality, according to which states not only have the legal competence to deal with public matters in their sovereignty, but also cannot overstep others' territory. In this vein, they

take a unilateral approach to this type of rule meaning they carefully specify to which matters it applies, taking the **territoriality principle** as a reference. Public law relationships involve the state and private persons and thus cannot, in principle, be enforced beyond their sovereignty.

Social security is another example of this type of situation, in which each national legislation establishes its territorial reach, usually applying to those whose workplace is within its territory. Cases involving a foreign element are also considered, but not all of them are taken into account, even if no other country would admit the relevant worker to its scheme, or, by contrast, more than one country covers the case. These cases can only be solved by state cooperation in the form of treaties. **Public international law** primarily deals with relations among states, providing the basis for such coordination. Treaties, conventions, memoranda of understanding, etc., serve to deal with cross-border situations and coordinate which state should take care of which via provisions, usually resorting to **connecting factors** with a view to distributing matters among them. One such connecting factors is the **flag State principle,** which serves to allocate administrative, tax, and social matters on board a ship to the country where she is registered taking into account that the territoriality principle does not apply to ships navigating through different jurisdictions and in non-sovereign areas. This principle is enshrined in Article 94 of UNCLOS.

The private side of the employment relationship is dealt with via **private international law**. The latter deals with relations among private persons, including states acting as privates/employers, by placing private interests first and thus not prioritising governmental interests except for exceptional cases which would require the application of the so-called **overriding mandatory rules**, also known as ***lois de police*** or **public law rules**, and the resort to the **public policy exception** aiming at avoiding the application of foreign rules in sheer contradiction with national fundamental values. In other cases, and to facilitate the circulation of legal situations involving private parties, legal systems are put on the same footing, considered equivalent to each other, and thus exchangeable when dealing with an employment relationship. The above-mentioned unilateral approach is usually substituted by a multilateral approach, crystallised in the so-called **conflict rules** by which a private international law situation is allocated to a legal system by a connecting factor, usually determined in accordance with the **proximity principle**, i.e., aiming at the most closely connected legal system to the case.

For example, the determination of the law applicable to individual employment contracts usually relies on the location of the **habitual workplace** as a connecting factor, taking into account that it points to the country where the provision of services is rendered as agreed by both parties to the contract and thus, it is a predictable legal system for all of them. Furthermore, this connecting factor takes into account the public dimension of the employment relationship to the extent that the mandatory (public) rules of the workplace will be generally applicable regardless of any other law applicable to the contract. It also takes the collective dimension of the employment relationship into account by ensuring that all employees working at the same place are subject to the same law, thereby guaranteeing equality at work through the law of the habitual place of work. Should the worker not have a habitual workplace, the place where the business which engaged him or her (**the engaging business**) is located has been suggested as the preferred alternative over the provision of services in more than one country.

Despite the 'international' in private international law, conflicts of laws are generally handled on a domestic level, meaning that conflict rules are part of national legal systems. This would not be problematic if it were not for the fact that, in practice, it means that the same private international law situation, such an international employment contract, can be subject to a different law depending on the jurisdiction where the case is brought before. The latter multiplies the chances for **forum shopping**, a legal phenomenon by which private persons hop from one country to another seeking legal advantages. They arise from legal divergence among legal systems in a variety of ways,

ranging from procedural advantages such as having access to a less expensive court system for the plaintiff than for the defendant, to substantial benefits arising out of the applicable law determined by the relevant national conflict rules, for example, in terms of wages, working time or dismissal periods.

To manage forum shopping, private international law strives for international harmony of decisions, meaning that it seeks the harmonisation of domestic conflict rules and thus the application of the same law regardless of the jurisdiction where the case is brought. Employment matters are again a case in point because of the consensus around the habitual workplace and the business which engaged the employee as the preferred connecting factors. It cannot only be found in EU legislation but in a number of national codifications such as the in Article 121 Swiss Act of Private International Law, Article 67 Tunisian Private International Law Code, Article 28 of the Private International Act of South Korea, Article 12 Japanese Act on the General Rules of Application of Law, Article 27 Turkish Act on Private International and Procedural law, Article 43 Chinese Law on Private International Law, in addition to Article 8 of the Rome I Regulation.

However, the said approach has its limitations because international harmonisation of decisions is still hampered by application issues, such as determining where the habitual workplace is located, while differences in national substantive legislation remain, thereby triggering forum shopping issues. Anyway, they illustrate the significance of the competent authority deciding the case not only because it would have to apply their own conflicts of laws system, but also because of their application. Hence, access to justice is a key issue in claiming rights embedded in a given legislation, more so in private international law situations.

3.2 International jurisdiction rules in individual employment matters

Access to justice in cross-border cases is granted by providing the plaintiff with alternative heads of jurisdiction while ensuring that the defendant can predict that (s)he will be claimed before any of the chosen courts. In this vein, party autonomy does play a role, also in individual employment matters. Both parties to the claim can either include a choice-of-forum clause in their employment contract or implicitly choose a jurisdiction by the plaintiff bringing his or her claim before a court and the defendant attending it without contesting its international jurisdiction (implied choice of forum). In individual employment matters, this might not benefit the employee as the weaker party to the contract, for which reason safeguards need to be in place, such as making sure that (s)he is fully aware of the consequences of choosing a particular jurisdiction.

The parties' choice of a particular jurisdiction is usually exclusive, and thus it works by excluding others, i.e., it prevails over other jurisdictions. Should a choice of forum not take place, individual employment contractual matters are allocated depending on who the plaintiff is. In the event that the worker is claiming his or her contractual rights against the employer, (s)he can choose between the defendant's domicile or the habitual place of work (replaced by the engaging business should the employee not have a habitual place of work). The latter forum is thus in line with the above-mentioned conflict rule in individual employment matters and faces the same issues, in particular when establishing the habitual place of work of a mobile worker. Counter-claims can also be made by the worker.

Should the plaintiff be the employer and absent a choice of forum, (s)he can only claim against the employee before his or her domicile to ensure the latter's right of defence. Employers can also counter-claim in lawsuits brought by workers against them in a different jurisdiction.

Section 5, Chapter II, of the Brussels I Recast Regulation and the Lugano Convention, which is devoted to individual employment contracts, including maritime employment. Seamen can invoke the forum selection clause that favours them, the jurisdictions of the employer's domicile and the

habitual workplace, or, failing the latter, the jurisdiction of the place where the business engaging the employee is located, and the forum of a branch of the employer. In addition, seamen may resort to the *forum arresti* provided for in Art. 7 of the Brussels Convention of 1952 and the Geneva Convention of 1999, both on Arrest of Ships.

3.3 Conflict rules in individual employment matters

Conflict rules can deceive material justice by being too superficial. While they refer all employment matters to a particular national legal system, they do not take into account the different scenarios that employment relationships face, and thus, such conflict rules fail to meet the expectations of the involved stakeholders. For it is not the same as an individual employment contract as a collective bargaining agreement, different conflict rules would need to be drafted. Critical to contracts is the ability of the parties to enter into them; however, it is questionable whether the habitual workplace has anything to do with a person's capacity, and thus a different conflict rule would be needed to determine the law applicable to the latter, based, for example, on the nationality/domicile of the concerned person. The same applies to other issues, such as the formal validity of a contract, a critical matter when it comes to ensuring consent to contracting by the parties to it. Other matters do not arise out of contracts, but out of torts, such as claims for compensation in the event of occupational accidents or illegal industrial actions. In view of all these scenarios, a specialisation of conflict rules is required, taking into account their different circumstances, in order to provide for the most closely connected legislation.

In order to comply with the principles of proximity and predictability, a functional approach is required, taking into account the interests and rights underlying the private international law situation. In individual employment contract matters, and before resorting to the law of the habitual workplace, parties might be interested in choosing the applicable law, especially taking into consideration that not all types of workers are at a disadvantage as regards the employer. Nevertheless, that is the usual case for which reason a compromise needs to be reached: while **party autonomy** might be accepted, corrections need to be implemented in order to neutralise the employer's superiority: by not allowing the choice of law, as in Chinese private international law; by restricting the choice to a list of laws as provided for by Article 121 of the Swiss Act of Private International Law, or by allowing an unrestricted choice of law, provided that the choice does not deprive the employee of the protection afforded by the mandatory provisions of the law that would govern in the absence of choice of law, as required by Article 8 Rome I Regulation, Article 12 of the Japanese Act on the General Rules of Application of Law, Article 27 Turkish Act on Private International and Procedural law or Article 28 of the Private International Act of South Korea. The latter correction achieves the protection of the weaker party without depriving him or her of the most favourable law chosen by the parties to the employment relationship.

The principles of proximity and predictability for the parties in the employment relationship are nevertheless favoured over the worker protection principle, on the assumption that both achieve the same goal. In addition to the prevalence of the habitual workplace as a connecting factor, the **escape clause** device has been developed to secure the latter. Although it is sustained that the habitual place of work and, failing that, the place of engaging business, provides for the closest law to the individual employment contract, this can be set aside in the event that there is a closer law than that one, considering all circumstances of the case.

The law applicable to non-contractual obligations, such as occupational accidents, obliges to the same principles. For example, Article 4 of the Rome II Regulation refers such cases to the law of the place where the damage occurs save two cases: (i) both parties share the same habitual residence; and (ii) the tort is manifestly most closely connected to another country than those already indicated taking into account all the circumstances of the case, in particular a pre-existing relationship between

the parties, such as a contract, that is closely connected with the tort/occupational accident. The benefit of this last provision is that it manages to allocate non-contractual disputes arising from employment relationships to the same law applicable to the individual employment contract.

3.4 Determining the applicable law to the relevant employment relationship

Within the EU area of justice, the key conflict rule for individual employment contracts is to be found in Article 8 of the Rome I Regulation, while the one for non-contractual disputes is to be found in Article 4 of the Rome II Regulation. Both will be applied if an EU Member State is competent (in accordance with Brussels I Recast Regulation) save the case of Denmark because it is not bound by any of these Regulations. Denmark is nevertheless bound by the Rome Convention on the law applicable to contractual obligations, which is the antecedent of the Rome I Regulation and whose Article 6 has inspired Article 8 thereof.

All of them also apply to collective employment law, although the specific provisions on individual employment contracts will not be applied for obvious reasons. Worker protection in the event of insolvency is handled by **Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).**

Table 3. Issues covered by the Rome I and Rome II Regulations

CONFLICT RULES

Rome I and Rome II Regulations

Connecting factors for specific questions	**Connecting factors for individual employment contracts**	**Connecting factors for individual non-contractual matters**	**Connecting factors for collective employment law**
Capacity to enter into a contract, including minimum age Professional qualifications to enter into a contract Worker protection in the event of the employer's insolvency	Formal conclusion Substantive conclusion, performance and termination		Formal and substantive conclusion, performance and termination of collective bargaining agreements Non-contractual obligations in the event of industrial action Information, consultation and participation rights Collective redundancies

As indicated above, the resort to conflict rules is triggered by a foreign element that makes it necessary to determine which legal system is applicable among those potentially relevant. While the application of one or another conflict rule depends on the legal dispute (the subject-matter of the rule), this type of rule is enshrined in the legal system of the competent authority, the so-called *lex fori*, the law of the forum (Latin for jurisdiction). However, they can submit the relevant legal dispute either to the *lex fori* or to a foreign law, the so-called *lex causae*, for example, because the place of

habitual work is located in a country other than where the claim is brought. The local authorities will thus have to apply a foreign law to solve the case. It is to note that these provisions refer to the substance of the case, because the procedure (either before an administrative or jurisdictional authority) is governed by the *lex fori* not only because authorities are subject to the legal system vesting their powers upon them, but mainly for practical reasons since the application of a foreign law comes with a number of difficulties such as the lack of expertise and higher economic burden that applying the local law.

Should a foreign employment law be applicable to a labour dispute, all substantive provisions of the said law would be applicable, including mandatory rules. While legal systems provide a framework within which private parties can agree upon specific matters, others are mandatorily decided by them. This is more obvious in the case of employment matters, where legal systems tend to be interventionist in order to protect workers and, in general, societies at large. When it comes to foreign employment relationships, there is no distinction between mandatory and dispositive provisions, and the *lex causae* is applied regardless of the grounds of the aforementioned principle of equivalence between legal orders, which are put on the same footing in accordance with tenets of private international law. Against this backdrop, a **comparative analysis of law** and, in general, **comparative law** as a discipline becomes an essential ally for the operation of private international law, taking into consideration that its learnings are a necessary tool for the application of foreign laws.

This *modus operandi* fosters forum shopping. The latter is not *per se* negative, given that it might fuel positive legislative competence among countries, i.e., trigger reform to improve national rules and make them more attractive and effective in their performance. However, it also has the potential to trigger a race to the bottom, for our purposes, of working and living conditions. Labour migration not only takes place when workers seek work abroad but also when companies seek workers abroad, not only by engaging foreign workers, but also by relocating their facilities abroad. In order to curtail these issues, state cooperation is essential and has crystallised in the form of **uniform rules**. They respond to harmonisation efforts, usually driven by international organization such as the International Maritime Organization (IMO), the International Labour Organization (ILO), and the European Union (EU).

After ratification and implementation, Member States share the same rules, making not only forum shopping useless, but also conflicts of laws to the extent that there is no such conflict. Nevertheless, those conflicts remain in practice to the extent that, first, it is impossible to agree on all legal aspects of a particular matter and there will always be need to resort to national laws to supplement uniform rules; second, uniform rules have to be nationally implemented and this step usually triggers further conflicts because of the cultural and socio-economic differences among countries leading to different interpretations of the same rules; and third, there are not many fully uniform rules because it is extremely difficult to make countries agree, hence while they agree on a minimum, they retain the competence to change the rule for the better in the implementation process as it happens with the international minimum labour standards codified by the ILO (Article 19 of the ILO Constitution).

Absent uniform rules, the application of the *lex causae* operates without restrictions in principle. There are, nevertheless, some cautions in view of the legal divergence among countries and the existence in any legal system of such fundamental principles that cannot be stepped aside by foreign rules. Some of them are embedded in the already mentioned **overriding mandatory rules**. According to Article 9(1) of the Rome I Regulation,

> Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic

> organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

This definition has been taken from the EU Court of Justice judgment in *Arblade,* dealing with the payment of minimum wage in accordance with a law other than that of the country of the habitual workplace. In this case, French construction companies had undertaken works in Belgium by deploying their own employees, whose working conditions were subject to the law of their home country, France. Accordingly, the employers did not comply with a number of Belgian labour provisions and were thus prosecuted in this country. The proceedings reached the EU Court of Justice to determine whether the Belgian requirement to have their own labour rules apply to employers seated in another EU Member State was in infringement of the freedom to provide services granted by Articles 49 and 56 of TFEU. While exceptions to this freedom are granted, the Court of Justice laid down that only overriding mandatory rules can be accounted among those:

> 30 As regards the second question referred in each of the two cases, concerning the classification of the provisions at issue as public-order legislation under Belgian law, that term must be understood as applying to national provisions compliance with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory of that Member State and all legal relationships within that State.
>
> 31 The fact that national rules are categorised as public-order legislation does not mean that they are exempt from compliance with the provisions of the Treaty; if it did, the primacy and uniform application of Community law would be undermined. The considerations underlying such national legislation can be taken into account by Community law only in terms of the exceptions to Community freedoms expressly provided for by the Treaty and, where appropriate, on the ground that they constitute overriding reasons relating to the public interest.

It also made it clear that not all labour standards are overriding mandatory rules, but others do:

> 9 It is therefore necessary to consider, in turn, whether the requirements imposed by national rules such as those at issue in the main proceedings have a restrictive effect on freedom to provide services, and, if so, whether, in the sector under consideration, such restrictions on freedom to provide services are justified by overriding reasons relating to the public interest. If they are, it is necessary, in addition, to establish whether that interest is already protected by the rules of the Member State in which the service provider is established and whether the same result can be achieved by less restrictive rules (see, in particular, Säger, paragraph 15, Kraus, cited above, paragraph 32, Gebhard, cited above, paragraph 37, Guiot, cited above, paragraph 13, and Reisebüro Broede, cited above, paragraph 28).
>
> 41 As regards the obligation on an employer providing services to pay his workers the minimum remuneration fixed by a collective labour agreement applying in the host Member State to the activities carried on, it must be recalled that Community law does not preclude Member States from extending their legislation, or collective labour agreements entered into by both sides of industry, relating to minimum wages, to any person who is employed, even temporarily, within their territory, regardless of the country in which the employer is established, and, moreover, that Community law does not prohibit Member States from enforcing those rules by appropriate means (Seco, cited above, paragraph 14, Rush Portuguesa, paragraph 18, and Guiot, paragraph 12).
>
> 42 It follows that the provisions of a Member State's legislation or collective labour agreements which guarantee minimum wages may in principle be applied to employers

providing services within the territory of that State, regardless of the country in which the employer is established.

Overriding mandatory rules are primarily principles of the *lex fori* (i.e., the law of the competent authority), which cannot be sidestepped by a foreign law because of the crucial values embedded therein. As such, these values depend on the relevant legal system and can also change over time, leading to situations in which what was not considered a *loi de police* in a country such as child labour, becomes so later on. Likewise, since they protect national values, countries do not have a list of overriding mandatory rules but they will be determined on an *ad hoc* basis.

Establishing which is an overriding mandatory rule is not an easy task, especially because it is to be domestically determined. Article 9(1) of the Rome I Regulation cannot, however, be ignored by domestic lawmakers and practitioners, and guidance from EU law has thus become essential when it comes to determining these types of rules. For our purposes, it is to highlight those provisions pursuing the mere protection of one of the parties to a contractual relationship cannot be automatically considered overriding mandatory.

Two criteria have been suggested for identifying such rules: first, whether the rule in question is of constitutional origin, such as those dealing with the prohibition of discrimination,[44] and second, whether it involves a public law matter, such as provisions for social security, health and hygiene, and risk prevention at work (Junker (2004), pp. 1212-1214; Junker (2009), p. 95; Krebbert (2000), pp. 531-535), or even collective redundancies, as the socio-economic organisation of a country is at issue [4:373-374]. Spain, for example, considers *lois de police* to be all rules whose aim is to preserve the dignity and privacy of workers.[45] Meanwhile, the UK, as well as Portugal, characterises *lois de police* as rules dealing with unfair dismissal,[46] whereas Germany has rejected such an approach but considers provisions aimed at protecting mothers and the disabled [3:204-205]. Nevertheless, in addition to the two aforementioned criteria, it is important to recall that overriding mandatory rules are not only those classified as public law, but can also be private standards, such as the payment of minimum wages [4:190].

A further important point to make is that overriding mandatory rules are, by definition, of exceptional application given that they set aside the law otherwise applicable. As a result, their application is restricted to cases where there is a link between the facts and the forum; for this reason, these rules normally determine their territorial scope of application [8:322-328, para. 11, 59-72].

Should a rule be characterised as overriding mandatory, it is applied regardless of the *lex causae*, i.e., while national conflict rules might submit the legal dispute to a foreign system, the latter cannot

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[44] A clause on compulsory retirement accepted by the Bahamian law governing employment contract was held to be against the Spanish legal system by breaching the prohibition of discrimination on grounds of nationality. See STSJ Galicia (Sala de lo Social), 26.4.2004; STSJ Canary Islands, Las Palmas, Sala de lo Social, Sección 1, No. 158/2005, 7.3.2005; STSJ Canary Islands, Las Palmas, Sala de lo Social, Sección 1, No. 159/2005, 7.3.2005.

[45] Article 3(1)(g) of Spanish Law 45/1999.

[46] Questioning this classification, see Merrett (2010/2011), pp. 238-243. According to article 53 of the Portuguese Constitution, dismissal must not only be fair, but also the final outcome of a proceeding in order to grant the employee's rights to be heard and to defence. See *Tribunal da Relação* Porto, Section 4 (Social), 2.6.2014: although the seawoman was protected by the Portuguese law as the law of the habitual workplace, it was contended by the French company that the closest law was the French one for which reason the court argued that, even in that case, Portuguese law would override French law given that the employee was not granted a fair dismissal proceeding by the company in the case at hand.

be applied in the face of an overriding mandatory rule. This principle is nevertheless to be questioned in view of the worker protection principle, meaning, what would happen if the foreign law is more favourable to the worker than the overriding mandatory rule? For example, the ability to enter into a contract is usually subject to the law of the nationality of natural persons in civil law countries. Let's suppose that the competent authority is obliged to apply an overriding mandatory rule requiring a minimum age to work on a vessel of 16 years; however, the applicable foreign law provides that the minimum age is 18 years. The rationale behind both rules is the protection of children; therefore, the latter is the more protective and should be prioritised over the first. The same would occur if wages to be paid in accordance with the applicable law of the employment contract are higher than those in the country where the case has been brought. It is to note that this is a deviation of the general principle according to which overriding mandatory rules fully displace foreign rules.

Overriding mandatory rules have to be applied by the competent authority when they stem from the *lex fori,* their own legal system. The situation is different when they are drafted by a foreign legal system (different from the *lex causae*, i.e., the competent authority is already applying a foreign system); although they can be applied by the competent authority, their application is not mandatory. This situation is covered by Article 9(3) of the Rome I Regulation, which reads as follows:

> Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

The version for non-contractual obligations can be found in Article 17 of the Rome II Regulation on rules on safety and conduct, such as mandatory rules on speed limits in highways or occupational health and safety rules at workplaces, which may also have an impact on contractual matters, such as informing whether dismissal has been (un-)fair.

> In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

Finally, the **public policy exception** operates in cases where the foreign law is to be applied; there is no overriding mandatory rule, but the application of the foreign provisions would have such an impact on the national legal order, the *lex fori*, that it would be intolerable to its principles. In accordance with Articles 21 of the Rome I Regulation and 26 of the Rome II Regulation,

> The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Accordingly, the public policy exception is to be applied exceptionally, serving as the ultimate safeguard of the country's fundamental values. In practice and in employment matters, their role is taken over by the significant number of overriding mandatory rules found in labour and employment laws.

3.5 Summary

The Table 4 follows the steps to be taken in order to solve legal disputes in employment matters when there is a foreign element, from establishing whether a particular country has jurisdiction to decide on a case, to establishing the applicable law to the merits of the situation depending on the (different aspects of) legal dispute at stake in a process called **characterization** by which they are legally classified in accordance with the *lex fori*, for example, in (non-)contractual matters and thus,

allocated to a particular conflict rule. Once a conflict rule is applied, the referred substantive legal system will be used to solve the legal dispute. Should this one be a foreign one, particular attention should be paid to the role of uniform rules, overriding mandatory rules, rules of safety and conduct, and the public policy exception, in protecting fundamental values of the forum or of a third country.

Table 4. Steps to be taken to get access to justice in cross-border cases

1ST STEP	ESTABLISHMENT OF THE COMPETENT AUTHORITY TO DECIDE ON THE CASE (ADJUDICTORY JURISDICTION)– International rules of jurisdiction as established by the law of the seized authority, the so-called *lex fori*
2ND STEP	DETERMINATION OF THE APPLICABLE LAW TO THE MERITS OF THE CASE Conflict rules as established by the *lex fori*

Although there is significant legal divergence in private international law across the world, the general doctrine has been shaped by the Hague Conference of Private International Law and cross-fertilization fuelled by European and US scholars and schools of thought. This report nevertheless focuses on EU private international law and labour law that affect transport workers. Hence, the following sources are of relevance:

- Regulation (EU) No 1215/2012 of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (further Brussels I Recast Regulation).
- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).
- Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

As indicated above, these regulations apply whenever a dispute is brought before an EU Member State authority. Brussels I Recast Regulation provides international jurisdiction rules upon which the seized country will have to determine whether it is competent to decide the case or not. Remarkably, it applies only when the defendant has his or her domicile in an EU Member State; otherwise, national jurisdiction rules apply (see Article 4 thereof). The exceptions are provided by choice-of-forum clauses by which both parties to a dispute agree to submit themselves to an EU Member State court regardless of their domicile, and individual employment contract cases in which the employer defendant is seated in a third country, but the case is brought before an EU Member State court. The latter is part of the worker protection principle and further influences on Section 5, Chapter 2, of the Brussels I Recast Regulation, where jurisdiction rules for individual employment contract disputes are detailed as mentioned above. Similar provisions can be found in the 2007 Lugano Convention on the international jurisdiction, recognition and enforcement of judgments in civil and commercial matters, to which the EU, Switzerland, Denmark, Norway and Iceland.

The key conflict rule for individual employment contracts is to be found in Article 8 of the Rome I Regulation, while the one for non-contractual disputes is to be found in Article 4 of the Rome II Regulation. Both will be applied if an EU Member State is competent (in accordance with Brussels I Recast Regulation or domestic jurisdiction rules) save the case of Denmark because it is not bound by any of these Regulations. Denmark is nevertheless bound by the Rome Convention on the law applicable to contractual obligations, which is the antecedent of the Rome I Regulation and whose Article 6 has inspired Article 8 thereof. **The EEA Agreement does not address conflicts of laws,**

and neither the Rome Regulations nor the Rome Conventions are applicable to the parties to it.

All of them apply to collective bargaining agreements to the extent that they can be characterised as contractual matters. However, as mentioned above, they cannot be considered individual employment contracts; instead, the jurisdiction and conflict rules for general contracts will apply. Worker protection in the event of insolvency is handled by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

The following table (Table 5) illustrates the steps to be taken to deal with a labour case, from determining the competent jurisdiction to consider the case to the applicable law, including whether it can be set aside in the event that it is in contradiction with an overriding mandatory rule or the public policy of the country where the case is brought.

Table 5. Steps to be taken to determine the law applicable to employment claims

CONFLICT RULES Rome I and Rome II Regulations (Insolvency is covered by the European Insolvency Regulation)			
Connecting factors for specific questions	**Connecting factors for individual employment contracts**	**Connecting factors for individual non-contractual matters**	**Connecting factors for collective employment law**
PROTECTION OF FUNDAMENTAL PRINCIPLES			
Uniform rules	**Overriding mandatory rules**	**Public policy exception**	**Rules of safety and conduct**

4 EU private international law and transport workers

4.1 Introduction

The above-mentioned regulations apply to both sea and land workers, i.e., those who bring their labour disputes before the competent authorities of an EU Member State will benefit from the same international jurisdiction and conflict rules, with the exception of Denmark where only the Brussels I Recast's jurisdictional rules apply. In addition to them, other EU law provisions might take precedent over them on account of the principle of speciality as acknowledged by Articles 67 of the Brussels I Recast Regulation, 23 of the Rome I Regulation, and 27 of the Rome II Regulation.

With regard to other EU law provisions that can take precedent over the Rome I Regulation, it was discussed whether Article 3 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage),[47] contained a conflict rule submitting 'all matters relating to manning' to the flag State except for small ships and island cabotage, to be submitted to the host state [9:90, 10:458].[48] A proposal for a Council Directive on manning conditions for regular passenger and ferry services operating between Member States, issued in 1998 in Brussels[49] nevertheless made it clear that that was not the case. Although never approved, this proposal assumed that private international law matters were to be decided by the then in force Rome Convention, later Rome I Regulation, and that the provision in Regulation 3577/92 is meant to apply to the public dimension of the employment relationship, but not to individual and collective employment matters. The latter are covered by the Rome I and Rome II Regulations.

The provisions in the Brussels I Recast, Rome I and Rome II Regulations do not differentiate between types of workers. Transport workers do not have specific jurisdiction and conflict rules, but they are subject to the general ones in these regulations, despite the fact that they are not only mobile workers, but their workplace is also mobile. There is another factor that complicates the determination of the applicable law to their contracts, namely, they have to be a party to an 'individual employment contract' defined by the Court of Justice as follows:

> … contracts of employment, like other contracts for work other than on a self-employed basis, differ from other contracts - even those for the provision of services - by virtue of certain particularities: they create a lasting bond which brings the worker to some extent within the organizational framework of the business of the undertaking or employer, and they are linked to the place where the activities are pursued, which determines the application of mandatory rules and collective agreements. It is on account of those particularities that the court of the place in which the characteristic obligation of such contracts is to be performed is considered

[47] OJ [1992] L 364.

[48] See also judgment of Tribunal Superior de Justicia de Sevilla of 12 December 2022, ECLI:ES:TSJAND:2022:14828, discussing the law applicable to an employment contract between a Spanish captain residing in Spain and a Belgian shipowner to provide services on board a Belgian-flagged vessel on river waters in Spain. The case is considered not to be included in Regulation 3577/92, but the implication is made that it could have displaced Rome I Regulation on the basis of the provision mentioned in text.

[49] See COM(1998) 251 final.

best suited to resolving the disputes to which one or more obligations under such contracts may give rise.[50]

The problem is that some categories of transport workers do not fit this definition because of their self-employment status. In this vein, and as is happening in other sectors, different working arrangements can be found in the transport sector. Remarkably, both the MLC, 2006, and C188[51] extend their rules to all types of employment and working relationships by defining seafarers and fishers as those who are employed, engaged or work in any capacity on board a ship.[52] Hence, they do cover a wider range of working arrangements than individual employment contracts in accordance with the above-mentioned EU law definition. Accordingly, some transport personnel cannot be covered by Art. 8 of Rome I on individual employment matters and are thus deprived of the worker protection principle [11].

It does not mean that the Brussels I Recast and Rome I Regulations are not applicable to their cases, rather, different conflict rules apply. More specifically, these self-employed transport workers are characterised as service providers and thus subject to Articles 3 and 4 of the Rome I Regulation, namely, that parties to the contract can agree on any applicable law without restriction because the implication is that there is no weaker party to the contract. Failing a choice of law agreement, the habitual residence of the party providing the services, i.e., the seafarer or fisher, will determine the applicable law. The ratification and implementation of the MLC, 2006 and C188 by EU Member States as agreed by the EU social dialogue,[53] implies that they will have to protect these professionals as well in view of these conventions' definition of seafarers and fishers,[54] but presumably via overriding mandatory provisions taking into consideration that neither Section 5, Chapter II, of the Brussels I Recast, nor Article 8 of the Rome I, Regulations apply to them.

The extent of the said protection for self-employed seafarers and fishers remains unclear, given that overriding mandatory rules are to be determined on a case-by-case basis. For example, Directive (EU) 2017/159 on the agreement concerning the implementation of C188 does not follow the C188 in defining the concept of fisher, but instead relies on the above-mentioned Court of Justice's case law. Hence, it restricts the scope of C188, as implemented by EU Member States, to only the fishers covered by an individual employment contract in the terms of EU law. There is one exception, though. OSH provisions will apply to any other working arrangements on board. Accordingly, some countries might conclude that only OSH provisions can be classified as overriding mandatory and thus

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[50] CoJ 15 January 1987, nr C-266/85, ECLI:EU:C:1987:11, *Shenavai*, §16.

[51] Although fishers are not transport workers, their working and living conditions are similar to those of seafarers as the two aforementioned ILO conventions illustrate.

[52] Articles II(1)(f) MLC, 2006 and 1(e) C188.

[53] Council Decision 2007/431/EC of 7 of June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ [2017] L 161/63); and Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche), OJ [2017] L 25/12.

[54] Annex to Council Directive (EU) 2017/159 of 19 December 2016, Part I, Arts. 1(f). Remarkably, Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC (OJ [2009] L 124/30), does not deviate from the MLC, 2006's definition of seafarer.

applicable to self-employed individuals while others might put them on an equal footing to those with an employment contract and thus covered by all parts of C188 as implemented in their national legislation.

4.2 The law applicable to individual maritime employment matters within the European area of justice

The relevant provision is Article 8 of the Rome I Regulation, which can be deconstructed in the following manner:

Table 6. Article 8 Rome I Regulation and individual maritime employment matters

Article 8 Rome I Regulation	**Steps to be taken to determine the applicable law to the individual employment contract**
1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.	1. Tacit choice of law by the parties to the contract 2. Express choice of law (they will not be applied if the otherwise applicable law (3-4) is more favourable to the worker than the chosen one)
2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.	3a. The law of the habitual workplace and, […]
3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.	3b. … failing that, the law of the business which engaged the employee
4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.	4. Escape clause: a closer law than that of the habitual place of work prevails (not over a choice of law agreement, either express or implied).

4.3 The habitual place of work in the transport sector

4.3.1 Introduction

The significance of the habitual workplace concept is clear from the above-mentioned table (Table 6). While party autonomy prevails, it can nevertheless be excluded if the protection provided to the worker by the law of the habitual place of work is more robust. If the parties had not come to an agreement on the applicable law, it would nevertheless apply unless there is a closer law to the

employment relationship, taking into account the circumstances as a whole. However, the implication is that the law of the habitual workplace is the closest to the employment relationship, making it difficult to find a closer law.

The establishment of the habitual workplace is not always straightforward such as the case of transport workers illustrates. The transport sector operates thanks to mobile workers who perform their activities in different countries and/or in non-sovereign areas, making it difficult, if not impossible, to establish in which country they have their habitual place of work. Should these workers not have a habitual place of work, Articles 21(1) of the Brussels I Recast Regulation and 8(3) of the Rome I Regulation point to the jurisdiction of the place of the business which engaged the worker as the one governing the employment relationship. However, this forum/connecting factor has been strongly criticised because it is easily manipulated by the employer, with the Court of Justice siding with this interpretation and displacing it in favour of a broad interpretation of the 'habitual workplace' concept based on the understanding that it better embodies worker protection in addition to complying with the proximity principle [12:173].[55]

The question is thus how to locate the habitual place of work if the worker is mobile. The Court of Justice has developed a fiction-like construction of where this place is based on their leading case law as regards executive jobs. Accordingly, the 'place *from which* the employee habitually carries out his work in performance of the contract' is used as a proxy of the habitual place of work following the application of a 'circumstantial method' which 'makes it possible not only to reflect the true nature of legal relationships, in that it must take account of all the factors which characterise the activity of the employee (…), but also to prevent a concept such as that of 'place where, or from which, the employee habitually performs his work' from being exploited or contributing to the achievement of circumvention strategies.'[56]

This place is nevertheless not easy to establish in transport situations, as can be learnt from the Court of Justice's case law, which has already applied it to three modes of transportation: **by road, sea, and air**. It is eminently factual and thus relies on accumulated evidence, not always easy to provide or examine,[57] especially when determining the international jurisdiction of a court. This case-by-case approach also sacrifices legal certainty and compromises the collective dimension of employment relationships to the extent that the habitual workplace cannot put all employees at the same location on the same footing anymore [13].

4.3.2 Transport by road

The aforementioned approach to employment relationships in the transport sector was first established by the Court of Justice in a case involving a heavy goods vehicle driver, domiciled in Osnabrück (Germany), who had been engaged as an international driver by Gasa, a Luxembourg company, under an employment contract signed in Luxembourg, including clauses conferring

[55] CoJ 15 December 2011, nr. C-384/10, ECLI:EU:C:2011:842, *Voogsgeerd*.

[56] CoJ 14 September 2017, Joined cases nr. C168/16 and C169/16, ECLI:EU:C:2017:688, *Nogueira and Others*, §62.

[57] The Van der Bosch Transporten saga confirms these difficulties in a case involving the determination of the law applicable to wages of international lorry drivers employed by a Hungarian company, Silo Tank, but working in the Netherlands for the Dutch company Van der Bosch. So far, three judgments by the Hoge Raad have been delivered in the Netherlands, questioning corresponding proceedings initiated at the Den Bosch court which suggested the application of Hungarian law (ECLI:NL:GHSHE:2017:1874, no. 3.16), the Arnhem-Leeuwarden court pointing to Dutch law (ECLI:NL:GHARL:2021:7206, NIPR 2021-539, no. 3.25) end the Hof Amsterdam concurred but was corrected in appeal with the request to re-evaluate the case.

exclusive jurisdiction on the Luxembourg courts, submission to the Luxembourg Law of 24 May 1989 on contracts of employment, and payments to the Luxembourg social security. Gasa was a subsidiary of the Danish Gasa Odense Blomster amba, whose business consisted of transporting flowers and plants from Odense (Denmark) to destinations situated mostly in Germany, but also in other European countries, employing lorries registered in Luxembourg and stationed in Germany. Gasa does not have a seat or offices in Germany, but after the announcement of its restructuring, its employees established a work council in this country, to which the claimant was elected. Soon after, Mr Koelzsch (the driver) was dismissed and brought his claim for unfair dismissal before the Luxembourg courts, asking for the application of German law and the protections afforded to Members of work councils.

Without addressing whether the protection against dismissal granted to staff representatives was included within the scope of Article 6 of the 1980 Rome Convention or not [14], the Court of Justice concluded that, 'in the light of the nature of work in the international transport sector', account must be taken 'of all the factors which characterise the activity of the employee' in determining their habitual place of work.[58] In this vein, the seized court

> must, in particular, determine in which State is situated the place from which the employee carries out his transport tasks, receives instructions concerning his tasks and organises his work, and the place where his work tools are situated. It must also determine the places where the transport is principally carried out, where the goods are unloaded and the place to which the employee returns after completion of his tasks.[59]

4.3.3 Transport by sea

In maritime transport, the workplace is a ship which moves from jurisdiction to jurisdiction and through non-sovereign areas, with the law applicable on board crystallised by secular tradition. In this vein, the role played by public international law in submitting the internal matters of the ship to the flag State informed, for example, the decision not to include a special rule for seafarers in the 1980 Rome Convention because it was understood that a correlation public/private international law could fill in the application of the concept 'habitual place of work' and thus submit all private/public matters to the same legal system, that of the flag State.[60] The rise of open registries and the lack of a strong socio-economic link between the ship and the country whose flag was flying have put this fiction in jeopardy [15].

Remarkably, the Court of Justice did not take into consideration this background in the *Voogsgeerd* case involving a Dutch engineer employed by a Luxembourg company, Navimer S.A., to serve on two vessels owned by the company and operating in the North Sea. His wages were paid by an agency located in Luxembourg, where his pension and sickness contributions were also being paid, and his employment contract included a clause submitting it to the law of Luxembourg. His claim for unfair dismissal was nevertheless based on Belgian law because his contract had been concluded at the headquarters of a different company, Naviglobe N.V., based in Antwerp (Belgium), where he had to go for instructions and where he usually returned at the end of his voyages. While the claimant

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[58] CoJ 15 March 2011, nr. C 29/10, ECLI:EU:C:2011:151, *Koelzsch* §48.

[59] CoJ 15 March 2011, nr. C 29/10, ECLI:EU:C:2011:151, *Koelzsch* §49.

[60] The Giuliano-Lagarde Report (1980), 24, says that it did not seek a special rule for crew members' work on board ship, clearly distinguishing this case from another dealing with workers on off-shore facilities and air workers; thus, not automatically applying the alternative foreseen for cases in which a habitual place of work is not identified.

intended to make use of the engaging business connection, the Court of Justice reiterated its case law in *Koelzsch,* requesting to examine

> whether the employee, in the performance of his contract, habitually carries out his work in any one country, which is that in which or from which, in the light of all the aspects characterising that activity, the employee performs the main part of his duties to his employer',[61] and thus, analyse 'the aspects characterising the employment relationship, as referred to in the order for reference, namely, the place of actual employment, the place where the employee receives instructions or where he must report before discharging his tasks.'[62]

This circumstantial method fits well with the case of workers employed on board ferries that always sail on the same route between countries and who embark and disembark at the same port, where they also provide services.[63] For other cases, and in view of the employment patterns in the maritime sector, it is not clear whether this approach that favours the place of the engaging business is less susceptible to manipulation than the flag State: maritime employment is mainly short-term and thus the analysis to be carried out under this test will usually point towards the recruitment and placement service which engaged the seafarer.

4.3.4 Transport by air

The use of a home base rule for aviation was already suggested in the Mario Giuliano and Paul Lagarde Report on the Rome Convention on the law applicable to contractual obligations.[64] The new wording of Article 8(2) of the Rome I Regulation compared with Article 6 of the 1980 Rome Convention is due to this understanding, which was scrutinised by the Court of Justice in the *Nogueira et al.* cases,[65] where the employment policies of Ryanair were discussed. Although having their own personnel, the Irish company usually hires aircrew members via recruitment and training agencies such as Crewlink, also a defendant in the said case law, or Workforce International Contractors Ltd., both also based in Ireland. They mainly specialise in cabin personnel with whom contracts drafted in English, subject to Irish courts and law, are concluded. In view that they must provide services on board aircrafts registered in Ireland, these contracts also indicate that the habitual place of work is Ireland although they designate an airport in another EU Member State as the employees' 'home base', such as Charleroi in the cases brought to the attention to the Court of Justice. Accordingly, the claimants' working day began and ended in Charleroi, as they were contractually obliged to reside within an hour of their 'home base.'

The Court of Justice answered in the negative to the question as to whether the concept of habitual workplace in the air navigation sector could be considered the 'home base' as defined in the Commission Regulation (EC) No 8/2008 of 11 December 2007 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to

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[61] CoJ 15 December 2011, nr. C-384/10, ECLI:EU:C:2011:842, *Voogsgeerd* §41.

[62] CoJ 15 December 2011, nr. C-384/10, ECLI:EU:C:2011:842, *Voogsgeerd* §40.

[63] See this approach in *Diggin v Condor* [2010] EWCA Civ 1133; BAG, 27.1.2011 − 2 AZR 646/09 (First court: LAG Düsseldorf, 28. 5. 2009 − 13 Sa 1492/08) NZA (2011) 28:1309-1312; LAG Mecklenburg-Vorpommern, 18.03.2008 - 1 Sa 38/07.

[64] OJ [1980] C-282/1.

[65] CoJ 14 September 2017, Joined cases nr. C168/16 and C169/16, ECLI:EU:C:2017:688, *Nogueira and Others*,

commercial transportation by aeroplane.[66] However, the Luxembourg court left the door open to use this concept as a qualified[67] circumstance while ascertaining 'in which Member State is situated (i) the place from which the employee carries out his transport-related tasks, (ii) the place where he returns after his tasks, receives instructions concerning his tasks and organises his work, and (iii) the place where his work tools are to be found.'[68] This circumstantial approach has given rise to a variety of interpretations in practice,[69] but it is expected that the home base rule will end up prevailing.

4.3.5 Discussion

Contrary to consumers and weaker parties to insurance contracts, workers cannot sue the other party in their domicile or habitual residence. Instead, they are granted access to the courts of the place where they are supposed to carry out, or have carried out, their tasks. As remarked by the Court of Justice, 'that is the place where it is least expensive for the employee to commence, or defend himself against, court proceedings',[70] which might explain why this forum/connecting factor is given such prominence over the place of the engaging business pursuant to the Court of Justice's case law.[71]

For mobile workers, the gap in access to justice persists because of difficulties identifying the place where, or from which, they habitually work. A problem that has been exacerbated by the Brussels I Recast Regulation, which, by extending its scope to also cover employers seated in third countries, have made national heads of jurisdiction based on weak contacts such as receiving a maritime employment offer or performing some tasks in national territory,[72] redundant. In order to fill in this gap, the establishment of a *forum necessitatis*, which allows courts to accept jurisdiction as a last-resort option, has been suggested, but it might not be the best option because of its exceptionality: the problem for these types of workers is whether the jurisdiction is affordable and not whether they have one or not.

The fact is that transactional costs of litigating elsewhere than the worker's country of habitual residence significantly hamper access to justice, and this issue is particularly acute for transport workers. The circumstantial approach taken by the Court of Justice in determining the place from which transport workers work might nevertheless point to that jurisdiction. In air transport, and

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[66] OJ [2998] L 10/1.

[67] CoJ 14 September 2017, Joined cases nr. C168/16 and C169/16, ECLI:EU:C:2017:688, *Nogueira and Others*, §§64-73.

[68] CoJ 14 September 2017, Joined cases nr. C168/16 and C169/16, ECLI:EU:C:2017:688, *Nogueira and Others*, §63.

[69] Litigation against Ryanair and its recruitment agencies in Spain has delivered a number of judgments with contradictory examinations as to where the *locus laboris* is. Some courts have concluded in line with the Court of Justice that the airport where the working day started and finished is critical in establishing this place [Sala de lo Social, Sección 1ª, judgment No. 2351/2010, 26 March (AS\2010\1693); Judgment Juzgado de lo Social nº 11 de Barcelona, 22 September 2017 (AS\2017\1977); Judgment Juzgado de lo Social nº 1 de Santa Cruz de Tenerife, 7 September 2018), while others have understood that the same facts were susceptible to fit in other heads of jurisdiction, namely, a branch in Spain [Sala de lo Social, Section 3ª, Judgment No. 995/2012 of 14 December (JUR\2013\106190)] or the engaging business [Sala de lo Social (Section 1ª) No. 4166/2015 of 25 June (AS\2016\365)]. Presented with very similar facts, others had denied jurisdiction: Judgment of Supreme Court 30 December 2013, Sala de lo Social (RJ\2013\8369); Judgment No 33/2018 of 9 of January of Superior Court of Justice of Valencia (JUR\2018\115917).

[70] CoJ 13 July 1993, nr. C-125/92, ECLI:EU:C:1993:306**, Mulox, §§18, 19; CoJ Case 27 Febrary 2002, nr. C-37/00,** ECLI:EU:C:2002:122, **Weber §40.**

[71] CoJ 15 March 2011, nr. C 29/10, ECLI:EU:C:2011:151, *Koelzsch v. Luxemburg* §42.

[72] Article 25 of the Spanish Law on Judiciary.

despite not acknowledging the so-called home-base rule, the said Court of Justice's interpretation leads to a place where air workers are expected to be residing (and even obliged by contract as aforementioned). The same might be predicated of road drivers,[73] although the proliferation of employment agencies, as in the maritime transport sector, is changing this consideration.

The case of maritime employment remains the most complicated because of the employment patterns in the sector, which allow seafarers to be recruited anywhere in the world, thanks to the proliferation of recruitment and placement agencies. A seafarer based in Romania can be recruited via email by a Luxembourg manning agency working for a Greek shipowner and will be shortly employed on board a Liberian-flagged ship. Neither the Court of Justice's circumstantial test nor the place of the engaging business might provide a forum in the seafarer's country of residence. **Interestingly, employers can only sue employees in their domicile, meaning that their defence rights are not compromised by such a head of jurisdiction. Hence, it would be advisable to open this head of jurisdiction to the employees' claims as well** [11]**.**[74]

Contrary to consumers, the law of the worker's country of habitual residence has not been considered because of the role played by the workplace's mandatory provisions in governing employment relationships. The strong public regulation of labour matters makes it advisable to have all aspects related to individual employment contracts subject to the law of the habitual workplace, so as not to have to apply different legal systems to them. As above-mentioned, transport worker's residence and place from which (s)he habitually works should usually coincide following the circumstantial test set up by the Court of Justice. However, the complexities of the maritime labour market have made the MLC, 2006 deviate from the flag State principle and allocate social security matters to the country of the seafarer's residence, except for those cases in which the social protection provided needs to be supplemented by the former [16]. Likewise, the OECD Model Convention on Tax and Income has also changed its connecting factor for the seafarer's domicile. For all the remaining issues, the MLC, 2006 still favours the flag State principle [15], as pointing to the place of the seafarer's habitual workplace. For example, and for inspection purposes, this country must issue a Declaration of Maritime Labour Compliance (DMLC) laying down in which manner they have implemented the MLC, 2006 in their territory, including issues such as the seafarer's employment agreement, working time, payment of wages or repatriation.[75] And that despite all the criticism that it has gathered and reflected in the above-mentioned Court of Justice's case law.[76]

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[73] Interestingly, in CoJ 16 July 2020, nr. C-610/18, ECLI:EU:C:2020:565, *AFMB*, the habitual residence factor is used in an international lorry drivers' case, to determine where to pay social security contributions after discarding a case of temporary posting.

[74] Article 115(2) of the Swiss Private International Law Act does grant this benefit to employees who may claim against the employer before the courts of their domicile or habitual residence.

[75] MLC, 2006, Regulation 5.1.3, Standard A5.1.3 and Appendix A5-II. Annex to Directive 2009/13/EC, Standard 2.1 states that 'Each Member State shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements (…)', while repatriation is laid down in Regulation 2.5 and Standard A2.5 thereof. Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006, supplements Title 5 of the MLC, 2006, seeking to harmonise inspection procedures and objectives across the EU, among others, and entitles the European Maritime Safety Agency (EMSA) to provide assistance and to collect information in these matters.

[76] **But not in CoJ Case 27 Febrary 2002, nr. C-37/00,** ECLI:EU:C:2002:122, **Weber §58, where public international law is critical in determining the claimant's habitual workplace.**

If the flag State law is not closed to the employment relationship, conflicts-justice might be achieved by resorting to the escape clause, although the latter is applied on the basis of the proximity and predictability principle and not that of the worker protection principle. This protection might be achieved by resorting to overriding mandatory rules [17:147], which prevail over the law governing the contract if more protective of the weaker party to the contract (contra [8:354]).[77] In the example above, if the Romanian-residing seafarer sues the Greek shipowner in his or her domicile, the applicable law could be the Liberian one if the flag State principle is applied; or the Luxemburg one if the circumstantial test set up by the Court of justice is followed; or else if a closer law is found such as that of the place where social security contributions and taxes are paid. Be that as it may, and regardless of the applicable law, the seized court might conclude that the (Romanian) forum's overriding mandatory rules are applicable as more favourable to the seafarer.

4.3.6 The role of overriding mandatory rules in protecting sea workers

As already indicated, each Member State determines which provisions in their legal system are overriding mandatory rules. The Court of Justice has nevertheless acknowledged that minimum standards laid down in directives can be considered overriding mandatory provisions, including cases in which they have been released to protect a weak party to a contract. The *Ingmar* case involved a UK-based company active as a commercial agent and thus covered by Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents,[78] whose protective measures in Articles 17-19 were avoided by a choice of law clause pointing to the law of California. However, the Court of Justice highlighted that these provisions should be treated as overriding mandatory provisions should the case show a strong connection with the EU territory, as happened in the Ingmar case.[79] This conclusion is nowadays reinforced by Articles 3 (4), 9 (3), and 21 of the Rome I Regulation.

In view of this case law, there are two issues worth of discussing: on the one hand, the role of the EU directives implementing the MLC, 2006 and C188 in consolidating overriding mandatory rules in the Member States; and on the other hand, whether they can be linked to the provisions in the PWD. Article 3 of the PWD includes a list of working conditions as laid down in the host country, which are to be applied in case more favourable to the posted worker than those laid down in the law applicable to their employment relationship, i.e., the law of his or her home country. In 2018, that list was updated in view of the detected abuses during the operation of the PWD as follows:

> 1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out: by law, regulation or administrative provision, and/or by collective

[77] Nevertheless, these rules do not always prevail over the law governing the contract according to Article 8 thereof. Interpreting the PWD, the Court of Justice concluded that, while Article 3 thereof also refers to overriding mandatory rules and thus to be observed in all cases, they do not prevent the application of other more favourable provisions to the posted work.

[78] OJ [1986] L 382/17.

[79] Court of Justice 9 November 2000, *Ingmar GB Ltd v Eaton Leonard Technologies Inc.*, Case C-381/98, ECLI:EU:C:2000:605.

agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual leave;

(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination;

(h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;

(i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Point (i) shall apply exclusively to travel, board and lodging expenditure incurred by posted workers where they are required to travel to and from their regular place of work in the Member State to whose territory they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

Spelt in this manner, these provisions fit well within the definition of overriding mandatory rules. An exception could be made with the concept of remuneration, taking into consideration that only minimum wages have been classified as such by courts of justice. However, Article 3 of the PWD clarifies that: 'For the purposes of this Directive, the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and means all the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with paragraph 8.' This distinction between core concepts and others that are not might confirm that point (c) is also an overriding mandatory rule. Additionally, the Minimum Wage Directive points in this direction as well, helping make the case for these provisions to be considered an overriding mandatory rule.

The consideration of these provisions as core to the worker protection and public interest is reinforced by the application of other working terms and conditions depending on the time period during which workers are posted in the sending country varying from 12 to 18 months and more, namely, taking into consideration the gradual integration of the worker in the labour market to which (s)he has been posted. Likewise, should the amount of work to be done not be significant, Art. 3(5) of the PWD authorises Member States to exempt employers from applying minimum paid leave and remuneration provisions as laid down in the home country, with the exception of posted worker by temporary employment agencies in which case Art. 3(1) applies regardless of the time worked by the employee in the home country.

All in all, this would entail that, regardless of the domestic classification of overriding mandatory rules, each EU Member State would have to consider the list of issues included in Art. 3 of PWD as such. This directive only applies to temporarily posted workers from one EU Member State to

another, a concept from which seafarers are specifically excluded, as discussed in the following section. Be that as it may, the fact that the list has been drafted with the worker protection principle in mind, while still complying with the freedom to provide services in another Member State, is a strong indicator that countries could consider the application of their domestic provisions dealing with these working conditions as overriding mandatory provisions.

In short, seafarers would also benefit from this interpretation meaning that should the applicable law to their employment relationships be less protective that the provisions on working time; annual leave; remuneration; etc… of the country where their claim is brought, the latter will have to be applied by the seized court. Moreover, it is worth noting that some of these provisions have already been, to a certain extent, harmonised at the EU level by the directives implementing the MLC, 2006 (or C188 for fishers). Although it cannot be contended that all standards in international conventions can be automatically considered overriding mandatory provisions, the combination of both, the PWD and other directives, can point towards those which can be considered as such.

The German Supreme Court, in a judgment of 9 May 1980,[80] decided against granting the 1974 ILO Convention on occupational cancer (C139) the *loi de police* status, in a case brought by German producers against imports of asbestos-containing products from South Korea. The German *Bundesgerichtshof* rejected their claim on the grounds that South Korea was neither an ILO Member at that time nor a contracting party to the convention in question. Consequently, while South Korea was not obliged to implement the convention, Germany was equally not entitled to impose it while importing products on the grounds of its overriding mandatory nature. However, and while this decision contextualised the significance of overriding mandatory rules' territorial scope of application, it is in contrast with recent developments at ILO where some standards have been allocated a higher status than others, in the ILO Declaration on Fundamental Principles and Rights at Work, while the principle of no more favourable treatment has been adopted in the MLC, 2006 and C188 and thus their requirements also apply to non-contracting states. Both factors should be taken into consideration by any country when deciding which falls within the definition of overriding mandatory rules.

The MLC, 2006 and C188 contain minimum labour standards which require national implementation, and thus, there is room for legal divergence among the contracting parties to them. In view of the room provided for legal divergence by the MLC, 2006 and C188 through the implementation process into national law, the issue can be raised as to whether the overriding mandatory provisions of the *lex fori* can be applied even in the case that this convention and its implementing EU directives have been properly transposed into the *lex causae*. While reminding that the term 'overriding mandatory provisions' should be interpreted in a restrictive manner, the Court of Justice has not precluded EU Member States from considering provisions that exceed minimum harmonisation as overriding and thus capable of prevailing over the applicable law of another Member State which has implemented an EU directive in a less protective manner.[81] In this vein, and although this unilateral approach to worker protection has obvious limitations, it might contribute to filingl in the gaps left by the difficulties in applying Article 8 to maritime employment matters. And in general, to other cases involving transport workers, taking into consideration that the proximity principle might not get them the

[80] BGH 9.5.1980, 1 ZR 76/78. Critical, see Muchlinski (2007), pp. 500-501.

[81] CoJ 17 October 2013, nr. C-184/12, ECLI:EU:C:2013:663, *Unamar* §50.

protection to which they should be entitled, in particular, given modern recruitment and placement practices.

5 The special case of temporarily posted workers

5.1 Introduction

Article 8(2) *in fine* of the Rome I Regulation makes specific reference to the case of temporarily posted workers:

> The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

The point made is that the applicable law to the employment contract does not change if the worker is displaced to another country for the provision of services on a temporary basis. Recital 36 of the Rome I Regulation further clarifies that:

> As regards individual employment contracts, work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.

The same rationale is applied by Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, which lays down the obligation to be affiliated to the social security system of the country of habitual place of work if the worker is temporarily posted to another country. However, this provision sets a limit on the concept of temporary, i.e., the anticipated duration of work performed in the host country cannot exceed 24 months; otherwise, it will become the country of the habitual workplace for social security purposes.[82] Remarkably, the same worker is obliged to pay taxes in his or her country of habitual work for up to 183 days, passing the obligation on to the host state after this period.[83]

The vagueness of the Rome I Regulation's provisions fits well with a type of temporarily posted worker, that of highly qualified employees who are displaced to provide services abroad on a regular basis or for a long period of time after they have been engaged in their home country by a company that it is either placing them abroad or via another company which can be in the same group of companies. The same does not apply to low-skilled employees who are temporarily displaced as a result of the EU free movement of services, which entitles companies located in an EU Member State to provide services in another EU Member State. Hence, they move there with their own employees, whose habitual workplace does not change and thus, their working conditions are set in accordance with the law of their home or sending country, although they are providing services in the host country. This differs from the case in which natural persons exercise their freedom of movement across the EU to find jobs in another country, which becomes not only the host country but also the country where their place of habitual work is located. In Table 7, the differences between the two EU freedoms for workers can be visualised.

[82] It should be noted that extensions to this period could be granted in accordance with Article 16 Regulation 883/2004.

[83] Article 15(2) OCDE *Model Tax Convention on Income and on Capital*.

Table 7. EU freedoms of movement and workers

EU freedoms of movement	Home country	Host country
Free movement of workers	-	Habitual workplace
Free movement of services	Habitual workplace	Temporary posting

The introduction of the free movement of services within the EU market has fuelled social dumping due to the socio-economic divergences among EU countries. The construction sector has been particularly affected by subcontracting to low-labour-cost countries such as Portugal and Eastern Europe.[84] In view of the challenges for national labour markets, many countries pushed for levelling the playing field, which happened with Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, the PWD.

The PWD provided workers covered by it with protection under some minimum labour standards laid down in the host state, if more favourable than those applied to their contract by the home state. It also laid down a special jurisdiction rule to claim for the application of these standards in the host state and, more importantly, information and monitoring obligations of compliance by service providers/employers of posted workers. However, the PWD failed to fully embrace worker protection, and several interpretive issues remained unresolved while fraud, such as the use of bogus employees and shell companies, was ripe.

The discussion as to whether Article 3 of the PWD gives content to overriding mandatory provisions of the host state or establishes an intra-EU-conflict rule has been settled by resorting to Article 23 of the Rome I Regulation that gives priority to special rules, such as those contained in the PWD.[85] The lack of clarity as to who is a posted worker and what is a temporary posting has given rise to serious problems such as the fuelling of shell companies and bogus self-employment that, first, triggered the release of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'). And second, the PWD itself has been amended by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 to increase worker protection by giving greater substance to Article 3 thereof and thus making the application of the host state meaningful.

There is a mismatch, though, as to the scope of application between the Rome I Regulation and the PWD, first, because of the different approaches to the concept of worker, i.e., while the Rome I Regulation relies on an autonomous concept of individual employment contracts as above discussed, the PWD refers to the issue to the law of the host country. In contrast with the PIL regulations, Article 2(2) of the PWD lays down that 'the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.' Remarkably, merchant

[84] CoJ 27 March 1990, nr. C-113/89, ECLI:EU:C:1990:142, *Rush Portuguesa*; 9 August 1994, nr. C-43/93, ECLI:EU:C:1994:310, ***Vander Elst*.**

[85] CoJ 8 December 2020, nr. C-620/18, ECLI:EU:C:2020:1001, *Hungary v. European Parliament*, §§179, 180; nr. C-626/18, ECLI:EU:C:2020:1000, *Poland v European Parliament and Council of the European Union*, §§132, 133.

seafarers are excluded from this directive, but fishers, as defined by C188, will be covered by it.[86] There is certainly an ongoing discussion about the concept of worker [18],[87] which has already resulted in some steps taken towards expanding it at the EU level.[88] Against this backdrop, and while a common definition is pursued at the EU level, the solution provided by the PWD, i.e., referring this definition to the law applicable to the posting, seems more protective than the one applied by the PIL regulations.

The second mismatch with the Rome I Regulation concerns the definition of 'posted' worker, which does not always overlap. As seen above, the meaning of 'temporary' posting is also different from the definitions provided in tax and social security instruments, which has been part of the confusion around as to when the PWD is to be applied and has informed the guarantees set up in the Enforcement Directive 2014/67 to curtail manipulation of the directive's provisions [19]. As indicated above, there is no agreement as to how long a posting is considered temporary; in other words, when a temporary posting ceases to be temporary and becomes the worker's habitual residence.

The issue is further complicated because, in accordance with the Rome I Regulation, a worker can be engaged to work in his or her home country, but immediately be sent to provide temporary services abroad. The problem is further aggravated by the lack of monitoring by authorities, which mostly relied on the A1 Document to inform national social security authorities of the change in the location of service provision. The Enforcement Directive 2014/67 has tried to address this issue, but the general understanding was that social dumping needed to be addressed in a more pro-active manner, in particular by amending Article 3 of the PWD to fully apply the law of the host state, i.e., not just some minimum standards such as minimum wage but the standard as applicable to local workers, including full remuneration. That is why Directive (EU) 2018/957 has amended the PWD.

5.2 Temporary posting of workers in the transport sector

In the transport sector, further problems arise because of difficulties in differentiating between a provision of service undertaken within the country from which the worker habitually works and another provided as part of a temporary posting. The issue has informed the exclusion of seafarers from the PWD as reflected in Article 1(2) of PWD, but other modes of transportation are included therein, being transport by road, particularly affected by this lack of clarity as below explained.

Nevertheless, the upfront exclusion of seafarers seems too radical, taking into consideration the MLC, 2006 concept of seafarer, which not only includes those who are employed, engaged, or work on board a vessel because of their navigation skills, but also others who might, for example, provide

[86] For example, share fishers are considered to be self-employed persons in some countries such as the UK, but workers in others such as Spain, a question which was settled by a Regulation of 28 October 1946. CoJ 14 December 1989, nr. C-3/87, *Agegate Ltd.*, ECLI:EU:C:1989:650, *The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte* concluded that a share fisher also benefits from the free movement of workers.

[87] Overall, the lack of a common definition of a worker at the EU level beyond the Court of Justice's case law is perceived as an important flaw because of the many changes experienced in the world of work which significantly curtail the protective function that employment and labour laws are meant to fulfil.

[88] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ [2019] L 186/105, calls also into question the concept provided by the Court of Justice to the extent that it seeks to ensure that the rights laid down therein apply to all workers in all forms of work, including those in the most flexible non-standard and new forms of work such as zero-hour contracts or platform workers. In this vein, this directive specifically targets bogus self-employment by determining that the focus should be placed upon the actual performance of the work instead of the parties.

hospitality or entertainment services on board and be temporarily posted by their companies. Once again, it seems that the exclusion has been made with the traditional concept of seafarer in mind. Be that as it may, seafarers with navigational skills seem to be better off with the directive because of the complexities in differentiating between their home country and their host country.

The non-inclusion of the merchant navy within the PWD's scope reinforces the conclusion that other modes of transportation are covered by it,[89] despite the fact that, for the personnel involved, the provision of services in several EU Member States also characterises their working conditions [20].[90] Their mobility raises question of when they can be considered to be performing temporary work in another EU Member State from the one in which they are based. Similar criticism has been raised in the tax and social security frameworks, where the provisions designed for posted workers do not take into consideration the type of work undertaken by highly mobile workers, such as those in the road and railway transportation [21].

The case of workers in the transport by road sector is particularly complex to the point that it was deemed necessary to clarify the distinction between home and host countries by releasing Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.[91]

The 'posted worker' characterisation in the framework of the transport sector is further complicated by the fact that not all activities performed in an EU Member State other than the country from where they habitually work qualify as a temporary posting, but only those that have a 'sufficient link' with the host country [22].[92] To this end, 'an overall assessment of all the factors that characterise the activity of the worker concerned' must be carried out.[93] Such an assessment is particularly complicated when it comes to transport by road. Accordingly, and for legal certainty purposes,[94] Directive 2020/1057 has been adopted 'to establish sector-specific rules reflecting the particularities of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom of operators to provide cross-border services.'[95]

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[89] CoJ 1 December 2020, nr. C-815/18, ECLI:EU:C:2020:976, *Van den Bosch Transporten*. Other EU instruments confirm this applicability such as Article 9(1)(b) of the Enforcement Directive 2014/67 specifically referring to 'mobile workers in the transport sector.'

[90] The lack of uncertainty as to whether aircrew members are posted or not is behind the CoJ 2 April 2020, Joined cases nr. C-370/17 and C.37/18, ECLI:EU:C:2019:592, *Caisse de retraite du personnel navigant professionnel de l'aéronautique civile (CRPNPAC) v Vueling Airlines SA*, dealing with payment of social security contributions.

[91] OJ [2020] L 249/49.

[92] CoJ 19 December 2019, nr. C-16/18, ECLI:EU:C:2019:1110, *Dobersberger* §31, dealing with the application of Article 1(3)(a) of the PWD to personnel providing catering and cleaning services on international trains crossing a second EU Member State for transit reasons.

[93] CoJ 1 December 2020, nr. C-815/18, ECLI:EU:C:2020:976, *Van den Bosch Transporten* §45.

[94] Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services {COM(2016) 128 final}, Strasbourg, 8 March 2016, p. 28.

[95] Directive 2020/1057, Recital 7 which confirms that 'The provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.' See Article 1(1) thereof.

Establishing whether transport personnel have been posted requires considering a set of indicia similar to those examined to establish the place from which they habitually work.[96] In addition to this circumstantial approach, Directive 2020/1057 takes into consideration 'the different types of transport operations depending on the degree of connection with the territory of the host Member State' [23],[97] paying attention to the relationship between the employer and the user undertaking and not only to the activities performed by the individual worker as happens in the PIL instruments.[98] Accordingly, it modulates the existence of a sufficient link with another EU Member State depending on the degree of connection with the 'Member State of establishment' from where the worker is supposed to be posted, instead of referring to the country from which work is habitually performed.

Both, bilateral transport operations as well as international carriage in transit across the territory of an EU Member State,[99] are not considered temporary postings on grounds of the nature of operations and their lack of connection with a second EU Member State, while cabotage operations,[100] combined transport operations or non-bilateral international operations,[101] taking place in another EU Member State might involve a temporary posting. To be noted, whether these workers are posted or not is still to be decided, resorting to the sufficient link test,[102] compromising legal certainty and, certainly, the objectives of this directive in ensuring the PWD application.

The relationship between the Rome I Regulation and the PWD does not look much clear after Directive 2020/1057. The end result might still be problematic because it relies on a factual approach to problematic cases that does not facilitate the application of both instruments, could end up considering temporary, which could have been habitual, and thus reduce drivers' protection [24]. That is compounded by the attention paid to the relationship between the employer and the client instead of the services provided by the worker, that might lead to a gap in their protection, i.e., the temporary relocation to another country does not automatically qualify as posting and thus does not grant the protection provided by the PWD, not helping eliminate social dumping in the sector.

Moreover, the meaning of 'temporary' posting in the Rome I Regulation and the PWD remains different. However, and in view of the problems generated by the duration issue, the PWD has been amended to include a new provision upgrading the protection to be provided to postings that last more than 12/18 months and which are meant to benefit from the law of the host state except for the procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses, as well as supplementary occupational retirement pension arrangements.[103] Should this provision be understood in the context of the Rome I Regulation as an indication that a change in the law applicable to the individual employment contract has happened? That might be the case in order to ensure worker protection, but not necessarily given the different

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[96] CoJ 1 December 2020, nr. C-815/18, ECLI:EU:C:2020:976, *Van den Bosch Transporten* §§47, 48.

[97] Directive 2020/1057, Recital 9.

[98] As indicated by Article 1(2) of Directive 2020/1057, it only seeks to clarify the application of Article 1(3) (a) of the PWD.

[99] See Article 1(3), (4), (5) and (6) of Directive 2020/1057. CoJ 1 December 2020, nr. C-815/18, ECLI:EU:C:2020:976, *Van den Bosch Transporten* §49.

[100] As defined in Regulations (EC) No. 1072/2009 and (EC) No. 1073/2009. See Article 1(7) of Directive 2020/1057.

[101] Directive 2020/1057, Recital 12 and 13.

[102] CoJ 1 December 2020, nr. C-815/18, ECLI:EU:C:2020:976, *Van den Bosch Transporten* §50.

[103] Article 3(1a) of the PWD.

rationales of the two instruments. Be that as it may, the application of the 'limited time' requirement in another EU Member State remains complicated in transport by road due to the short time spent in the relevant country, which will require an accumulation of periods to apply these rules.

All in all, the interaction between the Rome I Regulation and the PWD provides workers with different layers of protection as established by the law applicable to the individual employment contract, overriding mandatory provisions, and the law of the host country. However, the application of each layer brings its own complications, to which its interactions must be added. Is this manageable? Is worker protection achieved by this case-by-case approach?

6 Main conclusions

1. EU labour law consists of cross-sectoral and sector-specific instruments. Seafarers and fishers are covered by directives implementing the agreements concluded within the EU social dialogue to implement the MLC, 2006 and C188. At the same time, and like any other worker, they are covered by the cross-sectoral instruments issued by the EU, being excluded either partially or totally only in those cases in which it is specifically so stated.

   In other words, it should be stressed that the ILO framework does not prevent either the EU or Member States from going beyond the minimum labour standards embedded therein, for example, by developing those standards through cross-sectoral directives.

2. Partial or total exclusions of sea workers from EU labour law should be carefully reviewed, in the first place, because the concepts of seafarer, fisher or even sea worker are used without taking into account the variety of jobs that they can perform on board vessels or the different working arrangements in which they might be into. And, in the second place, because some exclusions are not in line with the international ILO framework and national practices.

3. The flag State principle is a public international law principle which serves to allocate all matters on board a vessel to the jurisdiction of the country whose flag the vessel is flying. It does not serve, however, to automatically solve private matters related to the vessel, including contractual and non-contractual matters involving sea workers.

   Private international law approaches these matters from a different angle, placing private interests at the centre: first, by enabling access to justice in transnational cases; and second, by allocating international private cases to the legal system most closely connected to them. In this field, the main governing principle is the proximity principle.

4. In individual employment contract matters, such a legal system is embodied by the worker's habitual place of work. While the flag State has been consistently considered this place for many years and both the MLC, 2006 and C188 still rely on this assumption, the proliferation of open registers has put an end to it. Instead, the EU Court of Justice has opted to build the concept of 'habitual workplace' for complex cases such as those of sea workers in the understanding that it points to the closer jurisdiction/law for the contract, and thus it is also the most protective for the worker. The Court's case law is nowadays codified in both the Regulation Brussels I Recast and Rome I Regulation, and points to the country *from which* sea workers habitually provide their services to their employers.

5. The place from which sea workers habitually work is to be determined following a circumstantial test which takes into account different factors and requires a case-by-case approach. Remarkably, the Court of Justice has not even considered the flag that the vessel is flying as one of these factors. Nevertheless, although this test might establish the closest law to the employment relationship, it misses several goals in determining the most appropriate legal system to govern these situations.

6. Brussels I Recast Regulation provides workers with several heads of jurisdiction among which they can choose (pointing to different countries, although not necessarily) and so ensure their right to access to justice. The habitual place of work is one of these heads of jurisdiction, as well as the employer's domicile. However, both the first one's lack of precision and the internationalization of the maritime employment relationship, might take sea workers' claims far away from their home, making these jurisdictions unaffordable and thus impossible for them to reach. Remarkably, while the employer can only claim against the employee in

the employee's domicile, this head of jurisdiction is not available to employees to sue employers. This limitation should be reconsidered to offer sea workers a court of justice close to them.

7. The same complexities burden the determination of the law applicable to the sea workers' employment agreement. More specifically, the circumstantial test used to determine from where sea workers habitually work endangers predictability and legal certainty. It does not end the fact that the factors to be considered can be easily manipulated by the employer due to the extreme internationalisation of sea work. Alternatives to this situation are difficult to find because the relevant rules in these matters are not governed by the worker protection principle, but by the proximity principle.

8. Worker protection might come via overriding mandatory rules. They are exceptional and geographically limited to the extent that they enshrine values the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, irrespective of the applicable law governing the employment relationship.

   Although seafarers are excluded from the PWD, this directive lists working conditions that might be considered overriding mandatory rules, or at least agreed upon by all Member States as overriding mandatory.

9. The protection to be provided by overriding mandatory rules is nevertheless limited. Their application is dependent on the EU Member State in which the claim is brought, to the extent that it is up to that country to determine which provisions of its legal system are overriding mandatory. EU labour law might play a role in harmonising this definition across EU Member States and in this vein, the list included in the PWD might be of relevance as said. The fact that many of these conditions are also referred to in the MLC, 2006 and C188, which adhere to the no-more-favourable-treatment principle, might help to understand that these overriding mandatory rules are not geographically limited.

10. Seafarers have been excluded from the PWD because of the difficulties in distinguishing their country of habitual workplace from the country of temporary posting. Workers in the road transport sector face similar challenges, but they are included in the PWD, although a specific directive has been issued to help determine when they are temporarily posted abroad.

    This directive comes with its own challenges, in particular because it does not really prioritise worker protection. Be that as it may, should it work, the case of seafarers should be revisited.

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Ensuring decent working time for the future–[104] Seafarers under EEA and non-EEA flags

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[104] The title draws on the 2018 ILO General Survey on working-time instruments, 'Ensuring Decent Working Time for the Future.'

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Executive summary

The ILO's decent work establishes a threshold of 48 hours per week. Beyond this limit, workers face exponentially higher risks to their health and safety.

More than two decades of research in the maritime world show that seafarers far exceed this benchmark. A recent study estimates seafarers work an average of 74.9 hours per week, significantly more than the global average of 43 hours per week.

Notably, very long hours of work at sea are permitted by flexible working time limitations.

The ILO's Maritime Labour Convention, 2006 (MLC, 2006) Regulation 2.3 mandates States to opt for two possible standards: 1) a 48-hour workweek (Standard A2.3#3) possibly extended to a maximum of 72 work hours (Standard A2.3#5a), OR; 2) a 48-hour workweek possibility extended as long as the labour still allow 77 hours of rest per week (Standard A2.3#5b). Translated into hours of work, this second standard becomes a 48-hour workweek possibility extended to a maximum of 91 hours.

Under Standard A2.3#5a, seafarers can work up to 72 hours per week, while under Standard A2.3#5b, seafarers are authorised to work up to 91 hours per week. This signifies that the flag State's decision to adopt Standard A2.3#5b significantly increases the maximum work time per week from 72 hours to 91 hours. In any case, both standards considerably diverge from shore work standards.

Intending to understand regulatory choices and make a regional comparison, the research established the applicable flag State norms and collected the justifications given by flag State representatives for their working time selection.

First, the study examined the working time regulations of 55 flag States, representing over 90% of the world's deadweight tonnage. The key findings are as follows:

- No flag State imposes a strict 48-hour workweek in shipping (Standard A2.3#3). Instead, all permit flexibility, allowing a 72- or 91-hour workweek.
- A significant majority of flag States (89.4% of world deadweight tonnage) adopt the least favourable standards for their fleets, permitting a 91-hour workweek (Standard A2.3#5b).
- Only five flag States (2.9% of world deadweight tonnage) opted for a 72-hour workweek (Standard A2.3#5a). Seven others (2.6% of world deadweight tonnage) adopted mixed standards—even when these contradicted the intent of the Maritime Labour Convention (MLC), 2006.

Second, the study interviewed representatives of 21 flag States. The interviews explore their rationale for selecting specific standards and implementing working time regulations. The key findings are as follows:

- Flag attractivity and employers' satisfaction are the main drivers for labour regulation development in the maritime sector.
- Despite established scientific evidence, regulators tend to understate the link between long working hours, occupational safety, and health and fatigue.
- The absence or limited feedback on work/rest hours violations identified during surveys hinders feedback to flag States.

Third, the study compared working time implementation between EEA and non-EEA flags using key indicators: weekly hours of work, weekly day off, monthly non-compliance, and adjustment of

work/rest hours. Findings show similarities rather than regional differences, meaning that working time implementation issues are equally pervasive across EEA and non-EEA flags.

To sum up, this research suggests that business interests prevail over occupational safety and health considerations. Regulations permitting excessive flexibility and flag States normalising poor standards for seafarers illustrate the disregard for decent working time in the maritime sector. Furthermore, the unaddressed issue of hours of rest record adjustments obscures feedback to flag States, who cannot address structural non-compliance.

Despite the abundant literature on occupational health and safety, and maritime research on fatigue and working time, the persistence of unhealthy working time standards in the marine sector suggests a disregard for or even disparagement of scientific evidence related to labour issues.

Not considering seafarers as an opportunity for the sector but a cost always to cut has normative effects on working time, rippling detrimental effects on their safety and health, and retention rates. The long-term supply of seafarers and the sustainability of shipping require seafarers to be considered normal human beings with identical physiological limits. In this respect, developing scientifically informed working time standards allowing decent working conditions at sea becomes necessary.

List of Acronyms

C188	Work in Fishing Convention, 2007
CBA	Collective Bargaining Agreement
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DMLC	Declaration of Maritime Labour Compliance
EEA Flags	European Economic Area Flags[105]
EPSR	European Pillar of Social Rights
EU	European Union
FAO	Food and Agriculture Organization
FoC	Flag of Convenience
ILO	International Labour Organization
IMO	International Maritime Organization
ITF	International Transport Workers Federation
MLC	Maritime Labour Convention
PSC	Port State Control
SDGs	Sustainable Development Goals
STC	Special Tripartite Committee
UN	United Nations

[105] In this report, the acronym EEA Flag means the EU flag States plus Norway, Liechtenstein and Iceland. In practice, this category excluded Liechtenstein because the country has not ratified any convention related to seafarers' working time (neither the MLC, 2006 nor the STCW 1978, as amended). Also excluded, Austria and the Czech Republic have not ratified the MLC, 2006, and their flag is minor (Austria less than 0.01% of the world GT) or inexistent (Czechia has no GT value reported to the United Nations Conference on Trade and Development (UNCTAD)).

1 Introduction

This report examines how the flag State[106] developed and justified national working time requirements for seafarers across the European Economic Area (EEA) and several selected non-EEA countries. It also intends to situate seafarers' working time within a decent work framework.

Concept of decent work and decent working time

The International Labour Organization (ILO)'s concept of decent work includes four pillars: employment (including pay level), social protection (including accident prevention and health protection), workers' rights, and social dialogue (including collective bargaining). Under the social protection framework, decent working conditions are assessed using multiple indicators: 'working-time indicators, prevalence of night work, prevalence of weekend work, prevalence of work-related accidents and occupational mortality rate.' [1]

Consequently, decent working time is a substantive element of the ILO Decent Work Agenda [2],[107] aligning with the strategic objectives of standards and fundamental principles and rights at work and social protection.[108]

Limiting hours of work, together with minimum/adequate living wages and safe and healthy workplaces, is a core component of a universal labour guarantee, as outlined in the 2025 follow-up and review of the 2030 Agenda for Sustainable Development (SDG) on decent work (SDG Goal 8) [3].

At a regional level, the European Union (EU) promotes decent work among the Member States by recommending the implementation of the European Pillar of Social Rights (EPSR)[109] under Article 292 of the Treaty on the Functioning of the EU (TFEU).[110] The EPSR's Pillar number 10 (Healthy,

[106] In this report, the ILO terminology (Member State) and IMO terminology (flag State) are alternatively used to identify the ship regulating authority.

[107] The four pillars of the Decent Work Agenda (promoting jobs and enterprise, guaranteeing rights at work, extending social protection and promoting social dialogue) are grouped into 10 elements: Employment opportunities, Work that should be abolished, Decent working time, Adequate earnings and productive work, Stability and security of work, Combining work and family life, Equal opportunity and treatment in employment, Safe work environment, Social security, Social dialogue and workers' representation.

[108] Seafarers' social security matters were explored in the study, 'Social security rights of the European resident seafarers a joint report of the European Transport Workers' Federation and World Maritime University,' published in 2022.

[109] The European Parliament, the Council and the Commission proclaimed the 'principles' of the EPSR at the 2017 Gothenburg Summit under three main sections: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. The European Commission set up the Action Plan for implementing the 'principles' in 2021://ec.europa.eu/social/main.jsp?catId=1226&langId=en

[110] For a full description of the employment and labour matters detailed in Article 292 of the Treaty on the Functioning of the EU (TFEU), refer to Report 1, 'Social rights of sea workers in European waters–A legal study.'

safe and well-adapted work environment and data protection) includes working time under 'fair working conditions.'[111]

The first ILO Convention established the initial working time framework in 1919 based on the principle of 8-hour workdays and one weekly day off. Subsequent scientific evidence and ILO reviews validated this framework [4-6]. This framework was revisited in 1999 with the emergence of the decent work concept. It was objectively strengthened in 2008 by the ILO's Tripartite Meeting of Experts on the Measurement of Decent Work, confirming that a 48-hour workweek is a threshold beyond which decent working time is breached.

Therefore, the ILO invited parties to:

> *Measure the percentage of workers who work hours in excess of 48. […] the excessive hours indicator is defined here as the percentage of employed persons whose usual hours of work in all jobs are more than 48 hours per week carried out for economic reasons.* [2]

When reporting to the ILO, parties are invited to distinguish between (1) 'Percentage of workers working long hours (more than 48 hours a week)' and (2) 'Percentage of workers working very long hours (more than 60 hours a week).' The report resulted in a 2018 general survey on working time, indicating that around 35% of workers worldwide work more than 48 hours per week, and around 12% of them work more than 60 hours per week [8].

Decent working time in maritime

The establishment of an ILO machinery dedicated to maritime labour has kept seafarers and fishers outside certain common international labour law developments, such as working time. The first ILO Convention enacted the 8-hour workday standards but excluded, inter alia, sea workers, undermining the working time universalism [9] [10]. The isolation of sea workers extends to national and regional levels. Consequently, certain labour instruments explicitly exclude sea workers and provide distinctive and often downgraded rights.

The current International Maritime Organization (IMO) and ILO working time regimes were developed from 1995 to 2007. STCW 1978, as amended, A-VIII/1 and MLC, 2006 Regulation 2.3, allow for a 10-hour minimum rest or 14-hour maximum work period, exceeding the 1919 established 8-hour workday and weekly working time threshold recognised under the decent work framework.

In practice, seafarers often exceed these benchmarks. A recent global study of 6,304 seafarers found that 92.6% work more than 48 hours per week and 85.7% of these more than 60 hours, with 53.3% working more than 72 hours per week (on average). Seafarers endure longer working time than their onshore counterparts, averaging 74.9 hours per week, significantly surpassing the global average of 43.1 weekly work hours (Table 1) [8] [11]. This misalignment highlights the gap between maritime working time standards and the ILO's universal standard and decent work framework [12] [13].

[111] Working time in the EU is regulated by Directive 2009/13/EC and Council Directive (EU) 2017/159, which are the outcome of EU social dialogue and the agreements made to implement the Maritime Labour Convention, 2006, as amended, (MLC, 2006), and Work in Fishing Convention, 2007 (C188), respectively.

Table 1. Overview of working time for seafarers and other workers[112]

ILO categories for work hours [8]	**Percentage of seafarers [11]**	**Percentage of worldwide workers [8]**
Long work hours (more than 48 hours/week)	92.6%	36.1%
Very long hours (more than 60 hours/week)	79.3%	12.0%
Not described categories in the literature		
Very, very long hours (more than 72 hours/week)	53.3%	-
Beyond compliance (more than legal limits)	11.7% more than 91 hours/week	-

Consequences of excessive working hours

Literature on working time and excessive overtime has consistently highlighted the negative effects on workplace safety, workers' occupational safety and health, and well-being [7] [10] [14]. Indeed, the evidence set a threshold of 50 hours per week, a point beyond which working becomes unhealthy and increases the risks to safety [4] [5] [15].

In short, seafarers' working time surpasses the unhealthful limits set for any worker. Given the regulatory flexibility and the reported heavy workloads of seafarers, the intended fatigue mitigation benefits of implementing working time regulations at sea may not be realised. Nowadays, long working hours combine with limited and almost inexistent shore leave for most seafarers [16], multiplying the risk of safety and health problems and interfering with work and personal life balance.

Moreover, a recent evidence synthesis on the recruitment and retention of seafarers indicates that hours of work and rest are key factors. The study recommends increasing rest hours for all seafarers to overcome the recruitment and retention crisis [17].

Flag States and working time regulations

When delimiting working time for seafarers, international regulations allow flag States to select between three normative choices, which 'shall take into account of the danger posed by the fatigue of seafarers' (MLC, 2006 Paragraph 4).[113]

[112] Report 3, 'A working time comparative analysis – Examples of labour gaps between sea and land workers,' includes a detailed comparison of working time between sea and land workers in Europe.

[113] In addition, 'tak[ing] into account of the danger posed by the fatigue of seafarers' (MLC, 2006 Paragraph 4) may incite Member States to select working time limitations enabling effective fatigue risk management and going beyond international requirements.

The ILO's Maritime Labour Convention, 2006 (MLC, 2006) Regulation 2.3 mandates States to opt for two possible working time standards resulting from three different norms: (1) a strict 48-hour workweek (Standard A2.3#3) AND 2) limiting either a maximum 72-hour workweek (Standard A2.3#5a) OR a minimum of 77-hour rest week (Standard A2.3#5b). The three different workweek norms are 48, 72 and 91 hours. It is important to recall that 2.3#5a and 2.3#5b standards are not equivalent. When transformed into hours of work using the ILO definition of rest (Standard A2.3#1), the minimum rest standard allows up to 91 hours of work per week, while the maximum hours of work standard permits 72 hours (Table 2).

Table 2. Comparison between hours of rest and hours of work standards [9]

Standard A2.3 paragraph 5 (a) Hours of work	
Max. 14 hours in any 24-hour	Equivalent to 10 hours of rest in any 24-hour period
Max. 72 hours in any 7-day	Equivalent to 96 hours of rest in any 7- day period
Standard A2.3 paragraph 5 (b) Hours of rest	
Min. 10 hours in any 24-hour	Equivalent to 14 hours of work in any 24-hour period
Min. 77 hours in any 7-day	Equivalent to 91 hours of work in any 7- day period

Establishing domestic regulations on maximum working hours or minimum rest periods allows States to deviate from the 48-hour workweek standard, affecting the ILO Decent Work Agenda [18] [19].

Furthermore, the implementation of national regulations is influenced by factors including the balance of power between maritime social partners, prevailing domestic working time practices, and regulators' perceptions of the workforce and the sector.

By analysing the normative decisions and justifications of EEA and non-EEA flag States regarding working hours at sea, it becomes possible to examine national and regional perspectives on decent working time for seafarers.

Additionally, comparing seafarers' regulations and practices between EEA flags and non-EEA flags would allow European social partners to analyse their situation and progress towards attaining decent working time and advancing a Decent Work Agenda.

2 Methodology

The study combines qualitative and qualitative methods to strengthen data collection and analysis.

First, the research focused on document analysis. This step collects evidence of working time regulations from EEA flags plus the top 35 leading flags of registration by deadweight tons.

Second, semi-structured interviews were conducted with representatives of flag States. While the researchers contacted all the flag States mentioned, interviews were conducted with those who agreed to contribute to the research.

Third, a quantitative analysis compared the working time implementation of EEA and non-EEA flags, using a 2022-2023 survey focusing on fatigue and work-related aspects.

The study received ethical approval (No. REC-24-123(R)) from the World Maritime University. All participants provided consent prior to the interview and accepted the anonymous use of their data.

2.1 Document analysis: DMLC Part I

Two main sources were used: the Declaration of Maritime Labour Compliance Part I (DMLC Part I) and/or national regulations. Additional sources supported the data collection to overcome difficulties in finding data or for countries not party to the MLC, 2006.

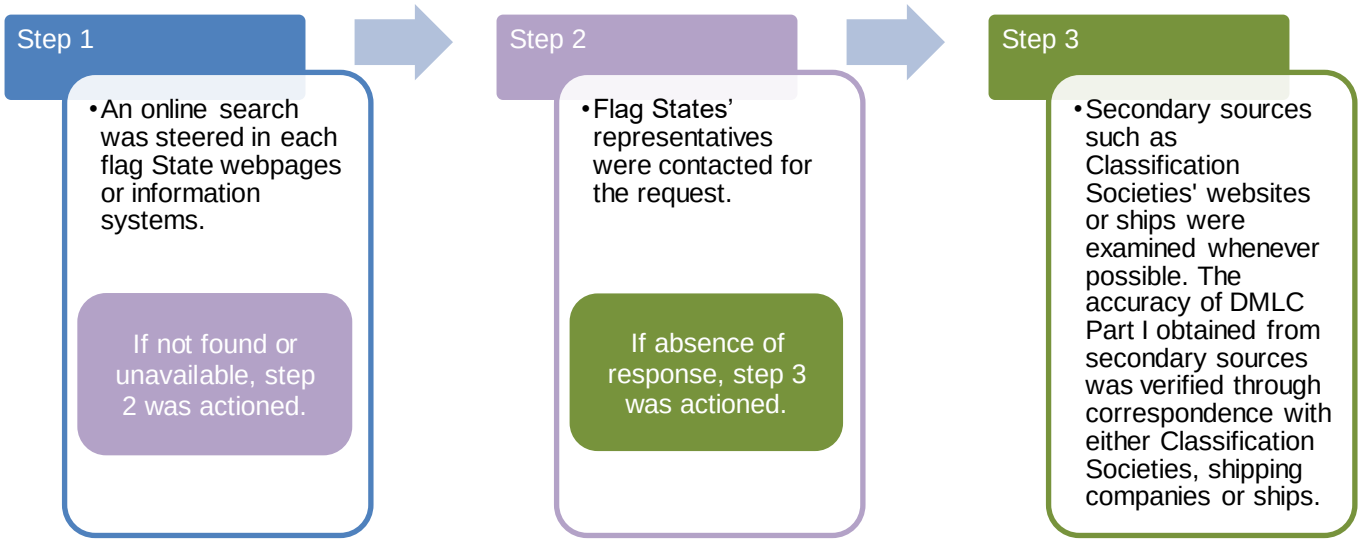
The DMLC Part I is a document issued by flag State authorities '[…] stating the national requirements implementing [the Maritime Labour] Convention for the working and living conditions for seafarers […]' (MLC, 2006, as amended, Regulation 5.1.3, paragraph 4). All ships flying the flag of a party to the Convention are required 'to carry and maintain' the DMLC Part I.

The analysis of the DMLC Part I provides objective evidence of flag States' decisions on working time because they are required to state in this document the measures taken to implement the MLC, 2006, including national provisions regulating working time onboard. Consequently, a review of the DMLC Part I appears to be a reliable approach for this study.

When the DMLC Part I was unavailable or unclear, national legislation was examined instead or in addition.

Gathering DMLC Part I and/or national law corresponding to the countries of study followed a sequential and systematic approach, as illustrated in Figure 1.

Figure 1. Steps for document extraction: DMLC Part I and/or National Law



The study explores the 30 EEA flags and the top 35 flag States identified by the United Nations Conference on Trade and Development [20],[114] which account for 14.2% and 94.1% of the total world deadweight tons, respectively.[115]

2.2 Interviews with flag States

Representatives from 21 flag States (or the competent authority) were interviewed. The participant characteristics are presented in Appendix A (Table A1).

The intention was to contact EEA flags and the top 35 flags. Both categories represent 94,9%[116] of the world's deadweight tons (notably, 10 EEA flags belong to the 2023 UNCTAD list). The focus on the top 35 flag States allows for the expansion of the sample's representativeness. Finally, a total of 55 flag States constituted the sample: 30 EEA flags and 25 non-EEA flags.

All the EEA flags, either with national or international (or both registries), were contacted and requested an interview. Out of the 52[117] flag States contacted, 21 countries accepted to participate in an interview. Eleven are in the EEA flags category, and nine are not. Six of the eleven EEA flags

[114] Based on data provided (last update 2023) by the United Nations Conference on Trade and Development (UNCTAD): https://unctadstat.unctad.org/datacentre/dataviewer/US.MerchantFleet.

[115] Ten EEA flags (Malta, Greece, Cyprus, International Shipping Register of Madeira, Danish International Register of Shipping, Norwegian International Register, Belgium, Italy, Germany and the Netherlands), accounting for 13.4 of world dead tonnage, are also included among the top 35.

[116] This figure includes the top 35 flags (94.1%) plus 25 EEA flags not included in the top 35 (14.16 for all EEA flags minus 13.4 for the 10 among the top 35 is 0.76).

[117] Three countries among the top 35 leading flags of registration (Cameroon, Russia and Iran) were not contacted. The researchers could not find an appropriate representative to attend to the request to participate in an interview.

interviewed belong to the top 35 flags. The nine non-EEA flags participating cover 44.5% of the world's deadweight tonnage.

One interviewer conducted all interviews. Before confirming participation, interviewees received an invitation letter, the interview questions, and the consent form, which was signed before the interview.

Interview sessions usually lasted 60-75 minutes and involved one or two representatives. In total, 19 men and 10 women participated. Of the 21 interviews, 19 were conducted online, while two representatives preferred to submit written responses. Codes are used for interview quotes: P (meaning participant) plus the number randomly assigned to the interviewee, then P-number.

The interview questions (see Appendix B) were organised into five sections. The first section covered the participants' sociodemographic details and job roles (Section 1). The remaining four sections addressed aspects related to working time as follows: Flag regulatory choice and influencing factors (Section 2), Fatigue mitigation efficiency (Section 3), Flag suggestions for implementing working time regulations and addressing hours of work/rest record adjustment (Section 4), and Flag responsibilities and action (Section 5).

2.3 Data source on work and rest hours implementation: EEA vs non-EEA flags

This analysis uses the data from an extensive survey on seafarers' fatigue and work conducted between June and December 2022. The original report[118] presented the findings for the whole sample but did not provide details on certain characteristics, such as the vessel flag.

Based on responses from an unprecedented sample size of seafarers, the database allows for examining the potential impact of the flag State on workload and the implementation of rest and work hours regulations.

The flags were categorised into groups that allowed for comparison:

- EU[119] vs non-EU flags;
- EEA vs non-EEA flags; and
- The ITF declared Flags of Convenience (FoC)[120] vs Non-Flags of Convenience (Non-FoC).

Two categories of variables are used to assess the flag State's influence over rest/work hours implementation:

1) Weekly work hours and weekly day off; and

2) Monthly non-compliance (exceeding time) and adjustment of work/rest records.

[118] Full details of the study from the report titled 'Quantifying an Inconvenient Truth: revisiting a culture of adjustment on work/rest hours,' which is available at: https://commons.wmu.se/lib_reports/80/.

[119] This category is composed strictly of EU Member flag States, meaning it does not include Norway, Liechtenstein, or Iceland.

[120] The 43 countries declared by the International Transport Workers Federation (ITF) as FOCs were used to create the classification: https://www.itfseafarers.org/en/issues/flags-of-convenience/current-registries-listed-focs

3 Results of the regulatory analysis

It is necessary to remind that flag States determine working time regulations applicable to their ships according to two possible standards: 1) a 48-hour workweek (Standard A2.3#3) possibly extended to a maximum of 72 work hours (Standard A2.3#5a), OR; 2) a 48-hour workweek possibility extended as long as the labour still allow 77 hours of rest per week (Standard A2.3#5b). Translated into work hours, this second standard becomes a 48-hour workweek possibility, extended to a maximum of 91 hours.

Therefore, data was extracted from various sources on 55 flag States,[121] representing more than 90% of the world's deadweight tonnage.

The working time regulation from the flags selected is listed in two tables:[122]

- Table 3 presents the working time standards for EEA flag States.
- Table 4 presents the working time standards applicable to the top 35 flags (in terms of deadweight tonnage).

[121] See footnote 114.

[122] The tables are also discussed in the academic paper 'Official defeat of seafarers' right to decent working time' [97].

Table 3. Hours of work and rest flag States' preferences- EEA flag States

No.	Flag State[a]	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
1	Belgium [21]	0.4	✗	✓	Flag State		
2	Bulgaria [22] [23]	0.01	✗	✓	National Law		DMLC Part I states: hours or work or rest (Regulation 2.3). The working time standard is extracted from Article 88c (New, SG No. 93/2017) of the Merchant Shipping Code (Title amended, SG No. 113/2002).
3	Croatia [24]	0.07	✗	✓	Flag State		
4	Cyprus [25]	1.4	✗	✓	Flag State		
5	Denmark [26] [27]	1.1	✗	✓	Flag State		Same working time standards apply for national and international registers.
6	Estonia [28]	0.0	✗	✓	National Law		DMLC Part I could not be obtained. However, the working time standard is extracted from Specification of Working and Rest Time of the Seafarers Employment Act (11.06.2014).
7	Finland [29] [30]	0.05	✗	✓	Flag State	National Law	DMLC Part I states: Seamen's Working Hours Act (296/1976), Chapter 4; section 9a.
8	France [31] [32] [33]	0.4	✓	×	Flag State		Different working time standards apply, depending on the register: National register: Hours of work (following the CBA, certain ferries registered on this standard allow 84 hours weekly).

No.	Flag State[a]	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
			✓ ✗	✓ ✓			International register: Hours of work for French residents and hours of rest for non-residents. Wallis and Futuna register: Hours of rest.
9	Germany [34]	0.3	✓	✓	Flag State		The hours of rest requirement on ships calling at several ports in a short sequence (less than 36 hours between the seaward positions for pilot transfer for restricted waters). After the ship has left the area with short sequences of port calls, and if a collective bargaining agreement or company or shipboard agreement does not apply, the hours of work apply in addition to the minimum hours of rest.
10	Greece [35] [36]	2.6	✗	✓	Classification Society and National Law	Ship	Exception: high-speed vessels for which a maximum of 8 plus 2 hours of work daily and 70 hours weekly [37].
11	Hungary	0.0					The DMLC Part I could not be obtained, just one vessel under this register.
12	Iceland [38] [39]	0.0	✓	✓	Flag State		DMLC Part I states: Working or rest time (Act No. 82/2022, Articles 21 and 22).
13	Ireland [40]	0.02	✗	✓	Flag State		
14	Italy [31] [42]	0.4	✗	✓	Flag State		The DMLC Part I states the Legislative Decrees.
15	Latvia [43]	0.01	✓	✓	Flag State	National Law	DMLC Part I states: National Maritime Code (Part G). In the Latvian Maritime Code, both standards are described.

No.	Flag State[a]	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
16	Lithuania [44]	0.01	✗	✓	Flag State		
17	Luxembourg [45]	0.06	✗	✓	Flag State		
18	Malta [46]	4.8	✗	✓	Flag State		
19	Netherlands [47]	0.3	✗	✓	Flag State		
20	Norway [48]	0.9	✗	✓	Flag State		
21	Poland [49]	0.0	✓	✗	Flag State		
22	Portugal [50]	1.2	✓	✓	Flag State		DMLC Part I states: The option between the hours of work or hours of rest schedule is made using the collective agreement or the employment agreement or, in its absence, by the shipowner.
23	Romania	0.0					DMLC Part I could not be obtained.
24	Slovakia	0.0					DMLC Part I could not be obtained, 0 vessels under this register.
25	Slovenia	0.0					DMLC Part I could not be obtained, just eight vessels under this register.
26	Spain [51] [52]	0.08	✓	✗	Flag State	Ship	Same working time standards apply for national and international registers (max. 12 hours of work daily and 72 hours of work weekly), and include 1.5 days off per week.

No.	Flag State[a]	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
27	Sweden [53]	0.05	✗	✓	Flag State		
		14.16					

[a]Exclude Austria, Czech Republic, Liechtenstein (see Footnote 105).

Table 4. Hours of work and rest flag States' preferences- top 35 flag States

No.	Flag State	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
1	Liberia [54] [55]	16.6	✗	✓	Flag State		
2	Panama [56] [57]	16.1	✗	✓	Flag State		
3	Marshall Islands [58] [59]	13.2	✗	✓	Flag State		
4	Hong Kong, China [60]	8.8	✗	✓	Flag State		
5	Singapore [61]	5.9	✗	✓	Flag State		

No.	Flag State	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
6	China [62]	5.5	✗	✓	Flag State		
7	Malta [46]	4.8	✗	✓	Flag State		
8	Bahamas [63] [64]	3.2	✗	✓	Flag State		
9	Greece [35] [36]	2.6	✗	✓	Classification Society and National Law	Ship	Exception: high-speed vessels for which a maximum of 8 plus 2 hours of work daily and 70 hours weekly [37].
10	Japan [65]	1.8	✓	✗	Flag State		
11	Cyprus [25]	1.4	✗	✓	Flag State		
12	Indonesia [66]	1.3	✗	✓	Flag State		
13	International Shipping Register of Madeira [50]	1.2	✓	✓	Flag State		
14	Danish International Register of Shipping [26] [27]	1.1	✗	✓	Flag State		

No.	Flag State	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
15	Norwegian International Ship Register [48]	0.9	✗	✓	Flag State		
16	Islamic Republic of Iran [67]	0.9	✗	✓	Classification Society	Ship	
17	Isle of Man [68]	0.9	✗	✓	Flag State		
18	Republic of Korea [69]	0.8	✗	✓	Flag State		
19	India [70]	0.8	✗	✓	Flag State		
20	Saudi Arabia [71]	0.6	✓	NA	NA		Saudi Arabia has not ratified MLC, but limits work hours to 72 hours, seemingly aligning with MLC, 2006, Standard 2.3, 5(a).
21	United States of America (USA) [72]	0.6	✗	✓	Flag State		USA has not ratified but is a party to the STCW 1978, as amended. The Code of Federal Regulations CFR 15.1111 Work hours and rest periods includes STCW 1978, as amended limits '(1) A minimum of 10 hours of rest in any 24-hour period; and (2) 77 hours of rest in any 7-day period,' and includes various provisions limiting working time for watchkeepers.

No.	Flag State	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
22	Vietnam [73] [74]	0.5	✗	✓	Flag State		DMLC Part I does not specify the regulatory choice. Then, Decree 121/2014/ND-CP, which transposes the MLC, 2006 regulation for Vietnamese national ships, is used.
23	Russian Federation [75]	0.5	✓	✓	Classification Society	Ship	
24	United Kingdom [76] [77]	0.5	✗	✓	Flag State		
25	Malaysia [78]	0.4	✗	✓	Flag State		
26	Belgium [21]	0.4	✗	✓	Flag State		
27	Italy [41] [42]	0.4	✗	✓	Flag State		
28	Germany [34]	0.3	✓	✓	Flag State		The hours of rest requirement on ships calling at several ports in a short sequence (less than 36 hours between the seaward positions for pilot transfer for restricted waters). After the ship has left the area with short sequences of port calls, and if a collective bargaining agreement or company or shipboard agreement does not apply, the hours of work apply in addition to the minimum hours of rest.
29	Cameroon [79]	0.3	✓	✓	Flag State		
30	Bermuda [80] [81]	0.3	✗	✓	Flag State		DMLC Part I of Bermuda could not be obtained from any available source. However, the Bermuda Shipping and

No.	Flag State	Share of world deadweight (%)	Hours of work Standard A2.3, para. 5(a) 72 hours of work weekly	Hours of rest Standard A2.3, para. 5(b) 91 hours of work weekly	Retrieved source for DMLC Part I or other data source	Verified by	Remarks
							Maritime Authority (BSMA) website provides information on flag preferences.
31	Türkiye [82]	0.3	✗	✓	Shipowners' association	-	Türkiye has not ratified the MLC, 2006. Considering that the country is party to the STCW 1978, as amended, the applicable standards are based on rest hours.
32	Netherlands [47]	0.3	✗	✓	Flag State		
33	Taiwan Province of China [83]	0.3	✗	✓	Classification Society	-	
34	Antigua and Barbuda [84]	0.3	✗	✓	Flag State		
35	Philippines [85]-[87]	0.3	✓	✓	Flag State		
		94.1					

3.1 The obvious: minimum hours of rest Standard A2.3#5b dominates

Notably, no country imposes a strict 48-hour workweek limit. References to a 48-hour workweek in the text only remind us of its existence as a working time normality. However, national regulations usually allow exceeding the 48-hour standard limit under operational circumstances, provided that the absolute maximum or minimum limits are complied with. In short, the intention of a 48-hour workweek is invalidated by the possibility of regulating based on maximum hours of work or minimum hours of rest.

Among the 55 countries reviewed, only three EEA flag States (i.e., the first registry of France, Poland, and Spain) and two non-EEA (Japan and Saudi Arabia) have selected to regulate based on maximum hours of work. Consequently, countries or certain registries (e.g., the French International Registry) overwhelmingly apply minimum hours of rest standards.

Therefore, strict rules imposed by countries focus on maximum hours of work or minimum hours of rest. In some cases, both limits are integrated, while in other cases, limits are determined through specific agreements.

3.1.1 Findings related to maximum hours of work

As indicated above, a handful of countries impose 72 hours per week for seafarers. Among the parties to the MLC, 2006, Japan, Poland, and Spain explicitly follow Standard 2.3#5a, limiting seafarers' workweek to 72 hours. Despite being a party to the MLC, 2006, France discriminates against the applicable standards according to the country's registry types. The international registry standards may not apply the same way on domestic fleet in certain countries.

Saudi Arabia, while a party to STCW 1978 as amended but not to the MLC, 2006, references working time limitations aligned with the MLC, 2006 standards (72 hours). This alignment allows compliance with STCW requirements (a minimum of 77 hours of rest per week, meaning a maximum of 91 hours of work per week).

3.1.2 Findings related to minimum hours of rest

Thirty-seven States, representing 89.4% of the world tonnage, opt for hours of rest limits. Of these, 16 are EEA countries.

In short, most flag States prefer implementing minimum hours of rest in their fleets. Consequently, seafarers on these ships can work up to 91 hours per week.

3.1.3 Interpretation and flexibility

While MLC, 2006 mandates each Member State to choose between 'maximum hours of work' or 'minimum hours of rest', certain countries opted for combined standards.

There are seven countries among the reviewed ones (i.e., Cameroon, Germany, Iceland, Latvia, Philippines, Portugal, and the Russian Federation), accounting for 2.6% of the world's tonnage, that opted for such 'combined standards' according to the DMLC Part I certificate issued by their flags.

These countries seem to have a singular interpretation of the requirement to 'fix either a maximum number of hours of work […], or a minimum number of hours of rest […]' (A2.3 # 2).

For example, Germany lets shipowners apply what suits their operational profile. Specifically, hours of rest are mandated for ships calling at multiple ports in a short sequence (less than 36 hours), while

hours of work apply otherwise [88]. This approach facilitates shipowners' requests to perpetuate the two-watch system but contradicts ILO experts' advice.[123]

The other above-mentioned countries stipulated in their national legislation that hours of rest and work are regulated in parallel without any further specification.

Case Study 1

As per the MLC, 2006, flexibility is allowed in countries, but subject to social dialogue. The following case study (Case Study 1) exemplifies how social partners can establish a collective agreement. However, any agreement providing flexibility must be '[…] on a basis no less favourable than this Standard.' (Standard A2.3#3)

Case Study 1. A National Legislation favouring seafarers for domestic trade

***Working time legislation and working conditions on high-speed ferries, Greece* (Maritime Private Law Code, 2023).**

In Greece, a special regime governs the work of seafarers on Passenger/Passenger Ferry/High-Speed vessels.

As contained in Presidential Decree No. 381/2001, 'Ratification of the Regulation on the maximum working hours of crews of high-speed ferries,' seafarers working on high-speed vessels are allowed a maximum of 10 hours of work daily and 70 hours weekly. [37]

In the context of their duties, results deriving from the joint inspections carried out by the Pan-Hellenic Seamen's Federation and independently by the Port Authorities reveal:

> a repeated violation of the legislation on the maximum daily working hours of the crews on board high-speed vessels. In 2024, out of the 657 inspections, 619 violations were detected, leading to 72 departure suspensions. So, in 2024, we had 286 fewer inspections on high-speed vessels than in 2023, but in 2024, the violations were 81 more, and suspensions were 44 more. Compared with 2023, the number of infringements and detentions increased in 81 and 44 new cases, respectively, despite having 286 fewer inspections. (extracted from Panhellenic Seamen's Federation Report of Inspection Results, 2024)

3.1.4 Other standards

Countries non-party to the MLC, 2006, usually comply with STCW 1978, as amended, standards included in Section A-VIII/1, which allow a 91-hour workweek and, under exceptional conditions, up

[123] In 2019, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) indicated that States need to choose ONE standard. CEACR has requested different Member States who have chosen both regimes 'to fix either a maximum number of hours of work or a minimum number of hours of rest in conformity with the Convention.' CEACR also note that the choice 'should not be read as giving shipowners the choice of regimes' or 'not subject to selective application by shipowners.' This has been the case of EU countries like Belgium and Italy [89] [90], who corrected it and opted for hours of rest. Similar requests have been made for non-EU countries like Cabo Verde and Curaçao [91] [92] among others. When conducting the study, the Portuguese registry also allows the decision to base the work of seafarers on hours of work or hours of rest 'by means of the collective agreement or the employment agreement or, in their absence, by the shipowner.' As occurred with other countries above-mentioned, the CEACR has made a direct request recalling the Member State in 2020 (and a reminder in 2023) that '[…] this provision should not be interpreted as to giving shipowners the choice of regimes concerning maximum hours of work or minimum hours of rest,' requesting the Government to fix it in accordance with Standard A2.3, paragraph 2 of the Convention [93].

to 98 hours. While Türkiye seems to apply the IMO standards on rest hours strictly, the United States combines STCW 1978, as amended, provisions (on rest hours) and specific national ones for watchkeepers (on working time).

3.1.5 Difficulties in identifying the working time regime during Port State Control (PSC) inspections

The DMLC Part I also serves 'as prima facie evidence of compliance with the requirement of [MLC, 2006]' during PSC inspection. However, some flag States (e.g., Finland, Iceland, Italy, Latvia, Malta, the Philippines, and Spain) only reference the applicable national legislation (including the references) for Regulation 2.3 in their DMLC Part I.

Some DMLCs Part I do not even reference their national legislation on working time. For instance, Bulgaria or Vietnam simply list the different elements of MLC, 2006, as a checklist without any details [22] [73].

The absence of an explicit reference to Regulation 2.3 Standards may cause difficulty among PSC Officers when assessing the applicable working time standards. To avoid this situation, the ILO CEACR has directly requested different Member States to indicate, together with the names of the national legislation/s, a summary of the content of their provisions/national requirements, as seen, among others, in the case of Spain [94].

The absence of clear and visible requirements would create issues with implementing and enforcing the working time regime.

4 Interview outcomes: regulatory choice justifications by flag States

This section first examines the underlying reasons for flag States adopting their working time standards. It then examines certain points related to the implementation and the role of flag States. Finally, flag State representatives provide recommendations for better implementing working time regulations and addressing fatigue.

As indicated previously, the MLC, 2006, as amended, gives the flag States the possibility of choosing between two possible standards:

(1) The normality constructed around 8 hours per day and 48 hours per week (Standard A2.3#3); possibly extended to a maximum of 72 work hours (Standard A2.3#5a).

(2) The normality constructed around 8 hours per day and 48 hours per week possibility (Standard A2.3#3) extended as long as the labour still allows 77 hours of rest per week (Standard A2.3#5b).[124]

4.1 Flag States' justifications for regulations

The initial analysis of flag State representatives' interviews allowed the categorization of regulatory decisions into four perspectives:

- Historical and legislative;
- Tonnage attractiveness in flag competition;
- Enhancing occupational safety and health (OSH); and
- The outcome of power balance.

4.1.1 Historical and legislative perspective

Consistency with the country's existing national regulations for maritime or land workers is the principal driver in shaping working time regulations. Moreover, since the STCW 1978, as amended, standards entered into force before the MLC standards,[125] seafarers' working time regulations under the MLC, 2006 were developed according to STCW 1978, as amended, rest hours standards.

> *I can only assume. It was just simply for convenience. Most seafarers and ships already used and had the system in place for regulating rest hours [under the STCW 1978, as amended], calculating rest hours rather than limiting work hours. It's simply mathematical, and for administrative reasons, it was easier to continue calculating rest hours than changing the whole system, the forms, and the software that calculates that. (P-14, non-EEA)*

[124] It's important to recall that non-equivalent standards A2.3#5a and A2.3#5b establish absolute limits and create a loophole, allowing seafarers to work extremely long hours on a permanent basis.

[125] Entry into force of the 1995 amendments containing the Section A-VIII/1 fitness for duty in 1997. Withdraw in 2021, the 1996 ILO Convention No.180 on Seafarers' Hours of Work and the Manning of Ships Convention entered into force in 1998 for signatories (only two at the time) and 2002 for the EU Member States. This convention contains the core elements of Regulation 2.3 in the MLC, 2006 standards, which entered into force in 2017.

We have local regulations, which have been put in place right before even MLC. We had a working time regulation in […], so that was encompassing STCW and other local regulations. […] So, we have actively chosen that our seafarers keep records of rest hours, and we follow the rest hours regulations. (P-11, non-EEA)

Because it was [STCW 1978] already before MLC, it complied with most of these. It was quite similar. […], and it's just minor adjustments. So basically, they said that our national legislation already complies with all these, so it's easy to follow up. (P-9, EEA)

We have the maximum hours of work because it aligns with the Workers National […] Decree […] on special working days for some sectors with peculiarities, as is the case of the maritime sector. The choice of hours of work in MLC establishes a maximum limit of 72 hours of work for 7 days, which coincides with our […] Decree that limits the maximum hours of work to 72 and is equivalent to 96 hours of rest for periods of 7 days, because the maximum daily time allowed is 12 hours, involving 12 hours of rest and a weekly rest of 1.5 days. Then 12 hours of rest per day by 5 days, and add 1.5 days off it gives a total of 96 hours of rest per week. (P-10, EEA)

4.1.2 Tonnage attractiveness in flag competition

Interviewees from EEA and non-EEA countries indicated that their selection of hours of rest standards was driven by the desire to offer shipowners flexibility and a competitive advantage in registering ships under their respective flags.

We first had the two options in our legislation, so we left it up to ship owners to choose between hours of rest or work. We did notice all the ship owners chose hours of rest because seafarers can work longer with the hours of rest. (P-2, EEA)

Because they [the flag] want to keep the […] flag competitive. Because we are a small nation, we need to have something to compete, and that's how they can keep the seafarers in the business, which they didn't even argue about. (P-9, EEA)

Certain flag State representatives noted the non-equivalence between A2.3#5a and A2.3#5b standards and admitted prioritising shipowners' interests or simply letting them decide.

Working standard is more restricted, and ships are commercially operated, and so we found that ship owners needed more flexibility, and therefore, we agreed to the minimum hours of rest standard. (P-5, non-EEA)

Back then, when, in terms of MLC, we had a good relationship with the seafarers and ship owners. Actually, we maintain the MLC's objective to ensure the well-being of the seafarers. At the same time, we're giving the ship owners a level playing field. So, we have a good relationship, I mean, as administrator, so basically, for the working hours, we let the company decide. (P-12, non-EEA)

Although this approach serves shipowners, hours of rest standards potentially incentivise seafarers to increase their earnings by working longer hours.

We support the minimum hours of rest because it gives more flexibility to ship owners. We support the seafarers working overtime to earn more money, justly justified, and they get paid for whatever they work and are not taken advantage of. (P-5, non-EEA)

4.1.3 Enhancing OSH

Member States opting for maximum hours of work are intended to better protect seafarers from the consequences of overwork and close the gap between sea and land workers.

Hours of work chosen because it is more protective for the worker, not for the employee, as regulated in the country for other workers. (P-10, EEA)

4.1.4 Outcome of power balance

Certain flag State representatives highlighted that the working time regulatory choice is decided between social partners, balancing the well-being of the seafarers (explained in terms of overtime) and competitiveness. The absence of workers' representatives' opposition mainly justified finding this balance.

> *The working and living conditions, etc., we always include social partners in the working groups that are dealing with the adoption of the drafting provisions of the legislative act. […]. So, for the case of sea workers, these limits are like accepted, like, normal, like, okay, this was never, like, put in front of us as some opposition in respect of the International Standard. (P-4, EEA)*

> *The decision was taken in consensus with social partners, seeing more reasonable the option B [i.e., A2.3#5b], not having any opposition but agreement by all the parties involved in the discussions. (P-1, non-EEA)*

4.2 Challenges in implementing working time standards

4.2.1 The weekly day off indicator

The requirements for a weekly day off for seafarers are explicit. Standard A2.3#3 recalls that 'the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays.' Verifying the implementation of such a day off confirms the application of 'normal working hours' for seafarers.

Of the 21 flag States interviewed, only four EEA and one non-EEA reported provisions mandating one day off per week in their national regulations. Most flag State representatives stated that their national requirements do not mandate a day off per week for seafarers, allowing them to work endlessly during their onboard period. Some respondents suggested that a weekly day off might be stipulated in a collective bargaining agreement (CBA).

However, some interviewees suggested seafarers prefer financial compensation or additional home leave instead.

> *If not enjoyed on board, workers can enjoy it during holidays or be compensated economically. […]. Workers sometimes prefer not to have a rest period on board but later have a longer holiday. (P-10, EEA)*

> *In practice, it does not happen because people might choose in lieu or compensatory time. On the other hand, seafarers prefer to work, 'not to sit in my cabin', and then be compensated with money or additional holidays. (P-1, non-EEA)*

Other participants noted that providing days off may not be practical in a 24/7 work-intensive system.

> *I recently posted this question to one of our union representatives and asked them, well, is this the practice that seafarers don't work at the weekends whilst on board? And he said, 'No, because there's always something to do when you're on board, so you always work seven days a week.' (P-2, EEA)*

> *It's not explicitly spelt out either in the international legislation or the national conventions because, as we all know, sailing a ship is a 24/7-hour business, and we leave it up to the management […]. But obviously, when you do watches on the bridge, you're a master or chief, you cannot take the days off while you're in operation, but you get them as holidays instead. (P-8, non-EEA)*

> *In reality, the days off are combined with vacation because, especially on a container ship, in most cases, it is normally not possible to give a free day off. It means, in reality, you work from Monday to Sunday […]. As a watch officer, the days off are compensated with vacation afterwards. That's the reality; we have never experienced that you really get the day off with your new engagement, especially for a container ship, so that you will enjoy it afterwards, on holidays. (P-21, EEA)*

I think it is not possible for the shipping companies to provide a day off for the seafarer. Of course, watch-keeping officers keep on doing the watch. But other workers sometimes do get the day off in practical terms. I have seen it in good companies, and that depends upon the CBA and also the companies' internal procedures to attract seafarers; but from our regulatory point of view or flag State point of view, I think there is nothing mandatory […]. (P-11, non-EEA)

Finally, certain EEA respondents indicated that seafarers working on short-term contracts, such as four weeks on and four weeks off, and operating two-watch systems, do not have a weekly day off.

We don't have a day off per week because they're working on rotation, which basically means you're paid 12 months a year. The average time on board is three to four weeks maximum. Then, you have the same amount of paid vacation. […]. But by the legislation, it's normally seven days a week. We have 40 hours. It's normal working hours per week, and then comes the overtime. Basically, the crew get extra payment for that weekend time, so they don't want to take a day off. I understand because that is like a huge increase in the basic salary that they work Saturdays and Sundays. (P-9, EEA)

4.2.2 Assimilation of very long hours by flag State representatives

Recall that maximum hours of work and minimum hours of rest are absolute limits, yet participants tend never to question these standards.

The limits are not usually reached; they are just limits. […]. However, I'm not sure that anyone would ever reach the maximum working period for this amount of time. Simply, there are other barriers and safeguards. We explicitly say this is an absolute maximum or minimum, regardless of what MLC allows. That ship owner should be discouraged from setting up the working schedule in such a way that the seafarer is actually working the hours that prescribe MLC because it's not that what MLC is saying that you should work this amount of time. (P-14, non-EEA)

The ILO notion of decent working time does not seem to have permeated maritime administrations. On the contrary, many comments revealed a limited awareness of evidence demonstrating the detrimental impacts of long working hours on safety and health.

I believe that we do not have very detailed and robust studies, holistic studies, on this issue. […]. There are a lot of proposals, but I think that in order to be mature, we have to conduct more detailed and very broad studies regarding this issue. (P-15, EEA)

Participants tend to focus on individual factors or the complex nature of fatigue, neglecting the impacts of very long hours.

There are a lot of factors playing into fatigue, and we really need to look at also why someone is tired or fatigued. Is it because they're not feeling well on board? Or being harassed on board that could affect their mood and then their sleep? […]. So, again, as I said, I don't think there's a one-size-fits-all. (P-2, EEA)

When people get overly tired, you send them to bed. And you know, it's so individual. It's impossible to say that one size fits all […] persons can be on board a year, a year and a half, they're just as happy as the day they join. Others, when they've been on board for four or five months, they're ready to go home, even though they have exactly the same workload on board. (P-8, non-EEA)

Several maritime administrations commented on the scarcity of evidence demonstrating breaches in working time limits. Arguments are based on a lack of identification during inspections or the absence of complaints, leading to a lack of recognition.

[…] but we do not observe anything to go inspection, yep, so that's it, and we asked to see first directly, and they're happy [crews]. (P-8, non-EEA)

Interviewees minimised the number of deficiencies based on their representation of working time implementation in their own records and the neglect of research.

We do get complaints. It's not that we don't get complaints. We get complaints that [they] falsify rest hours, but that's very few, I think one or two complaints I've seen in a year where they are falsifying records. And that's a serious matter, which we consider very serious. (P-5, non-EEA)

Additionally, the respondents reported that the rare deficiencies identified are often attributed to administrative mistakes or are unfounded.

We receive complaints of exceeding hours of rest, okay, but when we make the investigation, it comes out that they were not. They are unfounded. Most of them are unfounded. (P-3, EEA)

Moreover, some participants justified very long work hours by the potential existence of monetary compensation and other advantages.

We have to consider that, at least in our case […], seafarers have some other advantages compared to the onshore workers. For example, the pension scheme is very different for seafarers, because they work more. They have a very large step hold for their pension. They can have their pension at 52 years old instead of 67 that happens to the other workers. They have more holidays annually than the other workers because they work more. (P-15, EEA)

Finally, a few flag State representatives considered long working hours beneficial to seafarers, not only for wages but also to escape ship life boredom.

So we found that choosing the rest hours standards keeps seafarers more occupied, mentally occupied onboard the ship, and they are not engaged in being bored or depressed. So, you know, a working mind is a happy mind. […]. So they are on board to work and earn money for their families. That's basically why they come on board. (P-5, non-EEA)

Rest/hours regulations are absolutely fine […], you work, eat, sleep, chat with shipmates, and that's it. And whereas if you have fewer working hours, it just puts a lot of stress on you.[…] And only because people can prefer, you know, to work while being at sea. (P-8, non-EEA)

4.2.3 Breaches in certainties: intense schedule and two-watch systems

While flag State representatives tend to justify the regulations, discussions related to operations show a more nuanced picture.

First, numerous participants acknowledged the difficulties of complying with regulations or tackling fatigue when ships are engaged in short-sea shipping (or coastal shipping) or when port operations quickly succeed in one another.

Minimum rest is acceptable but not for all vessels; this is those engaged on short voyages like container ships calling to several ports in a short time. (P-13, non-EEA)

So, if 77 hours is enough during a week, it depends on the rotation and the work schedule on board. The trade of the ship is important, so if it's international, or if it's coastal, or if the vessels are calling different ports in a short period. (P-6, EEA)

You discharge the cargo, load the cargo, whatever you go with. And then you have to go back on the sea... impossible for the small crews to keep up with the rest hours regulations. (P-9, EEA)

Merely implementing conventions well does not fully address the issue of crew fatigue. For instance, container ships frequently dock at ports, and shipowners, to save costs, only staff according to the minimum manning standards. The actual workload leads to crew fatigue. Additionally, there is the ever-increasing amount of paperwork and administrative tasks. (P-19, non-EEA)

Certain respondents openly questioned the possibility of mitigating fatigue in a two-watch system environment.

[…] internationally, this dual watch system should be completely banned, at least six on six off watch, because it's causing major health issues and a fat peak because you never sleep those six hours. You

hardly get, like, four hours if you want to eat also, and like that, you're already stressed out. So, it's like, if you don't sleep, you make mistakes. (P-9, EEA)

So if we allow six to six watches, they can only be sustainable for one week, because then there is a rest hours violation that happens after seven days, I believe. (P-14, non-EEA)

One participant suggested that choosing minimum hours of rest standards is imperative to enable the 6on-6off watch system.

But the reason behind choosing our rest [rest hours] is that on some ships, especially smaller ships, and some guys on the large ships as well […] do 6on-6off watches. […]; we use those arrests to make the managers able to facilitate 6on-6off watches. […]. Most, basically, all the environments I've dealt with love the six-six watches. […], because they could make time pass and, of course, money counts everywhere, all the time, every day. (P-8, non-EEA)

4.2.4 The implementation challenges

In the view of the participants, standards are not the problem, but their implementation. The verification and enforcement of the regulation appears to be challenging, and the potential mismatch between manning levels and workload can negatively impact compliance levels.

I think if they are applied correctly, they're probably the best compromise we'll get in the transport industry. I think the difficulty comes when they're not applied when the records are falsified, and then people complain about being fatigued, but they've actually contributed to the situation by falsifying records. (P-18, EEA)

[…] the biggest challenges faced by seafarers are not the standards as such, but the enforcement and the verification mean available to flag State and port State officials. (P-17, EEA)

[…] and shipowners, in an effort to save costs, only staff according to the minimum manning standards. The actual workload leads to crew fatigue. Additionally, there is the ever-increasing amount of paperwork and administrative tasks. (P-19, non-EEA)

Furthermore, respondents consistently emphasised the need to strengthen implementation and increase manning levels to meet operational demands. While increasing manning to comply with rest/work hour regulations appears straightforward, participants pointed to practical challenges. One respondent suggested that arbitrary increases in manning levels may not help unless balance with workload is considered.

it is not the right measure putting more people on board the vessel, just to address this issue, while keeping the same framework of administrative workload […] the more people we place on board the vessel, they will be as busy in a couple of days, there'll always be work for them, and the new people will create work for the existing so there should be the right balance. (P-14, non-EEA)

Another participant highlighted the limited number of seafarers available.

In [country name], when we have violations […], the response of the ship owner is […] 'I'm seeking more seafarers, but I cannot find them. Can you find them for me to increase my manning level standards and to reassure me that I will not violate the working times?' One problem there, according to ship owners, is that there is no availability of seafarers. So, 'I have a very minimum tank of the seafarers, so I cannot increase the actual manning of the vessel to avoid the violation of work and rest hours.' (P-15, EEA)

Finally, any attempt to force a manning level increase may lead shipowners to flag out.

Now, in terms of the number of hours, I don't think there's much we can do unless, and it is, unfortunately, the world, […] putting more pressure on the ship owners to add one or two or three people, so reviewing the minimum safe manning. There's no other way out. Now, they may flag out. Yes, they may flag out, but it's up to us in Europe, you know, [country name] as well. (P-17, EEA)

4.2.5 Working time limits revision: mixed responses

When discussing updating working time standards, the answers were not homogeneous.

Half of the EEA flags (6 out of 11) showed openness to revisit.

> *If we consider that these standards were actually introduced many years ago. And if you consider that, […] seaborne trade has expanded in the last 30 years due to globalization, the cargo movement is done now in a speedy manner, certainly. If we consider that these standards are not adapted to the seafarers' needs, certainly, we have to open the discussion on this aspect and to see how we can revise these standards for the benefit of. (P-3, EEA)*

Others found it unnecessary or unrealistic.

> *Again, we have no evidence that it is necessary […] because it works. (P-16, EEA)*

About half of the non-EEA flags (5 out of 9) also considered review possible, especially for certain countries, to reduce the gap between sea and land workers.

> *This depends on many factors affecting the working environment, living conditions of people... in each country. However, reducing working hours is a general and inevitable need of most countries. (P-20, non-EEA)*

Following stringent inspections and union pressure, a change in national requirements for specific cases, like coastal vessels, could be envisaged.

> *Here in domestic vessels, the inspector comes and has interviews with every crew member. So, with an interview, they can correlate and cross-check whether the records are truly reported or not. In port State control, you cannot do it; you do not have time to do it. And the other issue is that [name of country], the unions are very close to the seafarers. (P-15, EEA)*

Feasible in principle, most interviewees recalled that current shipping paradigms and flag-out risk may freeze any progress.

> *I think this could not happen to the ocean work vessels or international voyages because we have a competition between vessels. You can understand it's not viable for these vessels. We have stricter rules for domestic than for foreign flag vessels. This could be considered only in domestic voyages, where we have a cabotage, and we can make these amendments obligatory for every ship. Still, this is not viable when we come to international business, and I cannot believe that could happen. (P-15, EEA)*

> *So the ship owners are actually putting you against the wall. And they say, okay, if you want me to add an extra person or two other persons on board, I'm going to flag out, and I'm going to Liberia or to Panama tomorrow. So, it's an issue. (P-17, EEA)*

> *I think no, because what will happen, of course, is that ship owners will gravitate towards the most favourable flag. Within the EU, we try to encourage ship owners to come into EU flags because we have some, I suppose we have some higher standards than third countries. (P-18, EEA)*

Respondents emphasised the importance of a level playing field, citing the limitations of national decisions and the crucial role of international coordination via ILO and IMO instruments.

> *I think the rules should be the same on each flag. So, an equal playing ground is the best way to do it. Then, it's easy to follow up, inspect, discuss the findings, or research on the matter when it's an equal playing ground, equal regulations. (P-9, EEA)*

> *I don't think we'd be able to effectively get through a change in regulations without an international mandate. (P-11, non-EEA)*

> *From a European point of view, because there is some EU competence within MLC, we could impose stricter working time regulations at the national level. But usually our position is to keep the*

international baseline […] we usually try to stick to the international regime just to guarantee a level playing field. I don't think it is completely unrealistic, but it would be difficult, extremely difficult, and it would need to have the full support of our social partners; otherwise it will not be possible. (P-2, EEA)

A couple of flag State representatives emphasised balancing business interests and workers' protection.

[…] we as a Maritime Administration, which I repeat, always wants to have a balance between serving international civil trade, but at the same time protecting the rights of seafarers. (P-3, EEA)

They're going to flag out, probably yes; but that is a risk, so we need to be aware of that, and we have to take courage to go for that. I mean, is Europe going to lose, you know, 5, 10, 15% of the fleet? So may be. I mean, either you want to protect the people, or you want to protect the business and the money and the taxes and whatever. (P-17, EEA)

Almost unanimously, flag States' representatives stressed the role of social partners when discussing such issues.

[…] sometimes we want something as a government, but the social partners are so strong, so that they can oppose it, and they can kind of tell the minister that we don't want this, and then it doesn't happen, even though that we as the regulatory authority want it to be in another way. (P-6, EEA)

[…] in order to amend any labour standard for seafarers, the government always listen to social partners, shipowners' association and seafarers' union, so without that social dialogue, without actually their consent, we cannot actually amend the Seafarers Health Act. (P-13, non-EEA)

[…] but it would be difficult, extremely difficult, and it would need to have the full support of our social partners, otherwise, it will not be possible. (P-2, EEA)

4.3 Violations and the role of flag State

Flag States have the duty to inspect ships and determine the 'action to be taken if deficiencies are identified.' The level of action depends on the severity of the violation. The ILO Guidelines for flag State inspections under the MLC, 2006 suggests the following:

- give appropriate advice;
- list, with appropriate timescales, the deficiencies to be rectified, for example, before departure; within 14 days; or before the issue of a Maritime Labour Certificate;
- prevent the ship from leaving port until necessary actions are taken;
- impose any penalties or other corrective measures available under national law;
- in the case of ships that are certified:
    - withdraw the Maritime Labour Certificate;
    - refuse to endorse the Maritime Labour Certificate following an intermediate inspection or refuse to renew the certificate.

As the MLC, 2006 Regulation 2.7 also includes the manning level, the manning certificate may be questioned if the rest/work hours violations are frequent and persistent. Annex 3, paragraph 2.6 of Resolution A.1047 on the Principles of Minimum Safe Manning confirms that '[…] the administration [flag State] should review and may withdraw, as appropriate, the minimum safe manning document of a ship which persistently fails to be in compliance with rest hours requirements' (IMO, 2011, annex 3, paragraph 2.6).

Despite research pointing out serious breaches in rest/work hours regulation implementation for decades, flag States do not observe such a trend when conducting inspections because seafarers tend to make up records, and inspectors rarely cross-check them.

4.3.1 Poor identification of rest/work hours violations

Most flag States identified work and rest hours violations as infrequent, receiving, on average, one or two cases per year (if not less).

> *I would say a few cases a year, maybe two or three cases a year, but not something that's very frequent. (P-5, non-EEA)*

> *I asked my colleagues from the inspection department to give me statistical data in respect of the working hours. They told me that we had two, only two complaints regarding that. (P-4, EEA)*

Most flag State representatives also observed the scarcity of complaints related to working time.

> *Very seldom, I would say, yeah, we do receive, no doubt there are sometimes, but not very prominently. […]. But we do receive, from time to time. I think at the beginning of this year, or the beginning of 2023, we had a complaint related to one of the passenger ships. (P-11, non-EEA)*

> *Not frequent deficiencies detected, in hours of work is almost zero. Sea workers are concerned about their salary and working conditions on board; they give more importance to money than to rest. […] 98% of the deficiencies care about salaries; sea workers do not complain about extra work. (P-1, non-EEA)*

> *Usually, the complaints from our ships come to me. So, as I said, we do not receive a large number of complaints. We are not exactly sure if this is because everything is fine onboard or if seafarers don't know the way to reach us as an administration. (P-2, non-EEA)*

> *Most of the complaints are related to repatriations and the money-related ones. (P-11, non-EEA)*

Some representatives further added that complaints related to working excessive hours only become noticeable when salaries or work hours are not paid.

> *Complaints from seafarers… they are not quite ready to make complaints, even if we have very detailed provisions under the MLC and national provisions, it doesn't actually function. […] Complaints only exist when not paid; if not, no complaints. In these cases, the solution is to settle non-payment of overtime allowance. (P-13, non-EEA)*

4.3.2 Follow up with shipping company: quick resolution and compensatory rest

According to the intention of the MLC, 2006 Standard A5.1.5#2, complaints are resolved at the lowest level possible, meaning the ship or the company.

> *If you get a complaint of any kind, companies are very good at resolving the complaints themselves because it's usually something that hasn't reached the management of the flag, but they intervene immediately, and the problem is resolved in a day. (P-8, non-EEA)*

The most frequent action the companies take when exceeding working time is to provide compensatory rest.

> *[…] that is something ship owners really don't understand, that they need to get compensatory rest to the seafarers, and they cannot continue having seafarers who come out at two o'clock in the morning and not get compensatory rest. […] And so many ship owners and ship masters and chief engineers don't understand that they need to get compensatory rest, and therefore they get detained for that. (P-5, non-EEA)*

> *When the ship is calling at port, then that is the sort of convention that allows the Master to call the watchkeepers to wake up, and they have to work. After that, the Master should compensate with rest, but actually, for the appraisal, the ship cannot actually provide compensatory rest, although the convention says that the company compensates with hours of rest. Then, what if the captain cannot provide compensatory rest? We can interpret that in that case, you must give overtime allowance. But in that case, the ship owner would say, 'I already paid fixed overtime allowances.' (P-13, non-EEA)*

If there is a reiterative working time violation, flag States follow up with companies and request correction measures and an action plan that includes reviewing the manning certificate.

> *We keep in touch with the ship owners until the corrective action measure is forwarded, and then it's closed. If there are one or two, let's say, violations on the same vessel, same company on a regular basis, okay, we ask the company to review the minimum safe manning of the vessel. (P-17, EEA)*

Some respondents reported the attitude of certain shipowners when facing violations of rest/work hours and their attempts to avoid manning changes.

> *[…] realistically, they don't want to increase the manning. They might be able to justify the particular period; perhaps they're on a particular run for a few weeks, or needed to work a bit extra, so they would justify it and say, 'look, the situation has been normalised.' (P-18, EEA)*

> *Shipowners are actually putting an interesting argument on the table; […] and I'm not really convinced, but they're saying, 'Yeah, but we don't find the people. There're not enough people in Europe, or they are too expensive. So, we need to leave, because our vessels cannot stop; we've got an entire world waiting for the merchandise.' So, you know, life goes on. (P-17, EEA)*

4.3.3 Enforcement responsibilities between flag States and PSC

Interestingly, the distribution of responsibilities between the flag State and PSC related to monitoring rest/work hours implementation seems unclear. Many flag State officials consider that the flag State's action is limited. Therefore, additional enforcement efforts should come from PSC regimes, especially regarding the implementation of rest/work hours.

To justify such a position, respondents pointed out the following:

(1) Lack of resources. Knowledge gaps, inadequate/insufficient PSC training, time limitations, staff workload, and absence of dedicated tools/procedures challenge the verification of data accuracy. Additionally, the making up of records hampers the possibility of fast inspections.

> *Most of our colleagues don't really know how to control resting or working hours. So, we have an issue there as well. […] usually, they have to visit so many ships during the year, because, you know, according to the European directive, so you've got one or two PSCO, and he needs to do two or three visits a day. So, he goes in, sees what is really important, and the rest hours, I mean, this takes too much time […]. (P-17, EEA)*

> *I believe that the resources and the tools for the inspectors during the port State control are insufficient to reach very detailed findings because the time is very limited. […] On the other hand, the inspectors cannot go very deeply because they do not have data in order to cross-check the records they see in the working documents. So, they just accept what the seafarers and the captain have signed on the records. (P-15, EEA)*

> *The records are completely neat and clean, yeah, […]. And there is one problem also for the Port State: we don't have enough time to dig deeper into this problem because we are very often one person on board, and who am I to disturb them [crew] for a couple of hours? Also, because they need sleep. This is very common, a lack of resources, yeah, for PSC. (P-7, EEA)*

(2) Limited cooperation between flag State authorities and PSC regimes. It was suggested that the inspection database and PSC practice should circulate among authorities to enhance compliance pressure by better targeting focus areas. Enhanced communication and cooperation between maritime administrations were highly anticipated.

> *We need the information from the Port State. So, the only information that we get from the Port State or the classification society is about our vessels. We don't know what the other reality is. I mean, we have an idea when you see, for instance, the outcome of the concentration inspection*

campaign on working hours and resting hours in the Paris MOU. Still, we don't really know what's going on in Europe as such, on a regular basis, on a continuous basis. (P-17, EEA)

I think perhaps it could be improved [the interaction]. I think it's also a point that I have noted for the next MLC STC: to get in touch with our Port State Department and check with them to see the biggest issues they face. […] it's sometimes a bit too much business as usual, and we sometimes forget to give each other feedback. (P-2, EEA)

I wear two hats, so as a Port State Control Officer, if I find violations, it's against the ship. So, you don't tend to discuss it with the flag State because you write the deficiencies against the ship, and then it's up to the ship if they want to report it to the flag State. (P-18, EEA)

Poor interaction with PSC on MLC deficiencies in general. We get feedback from the shipping companies that we have a problem with this, but not from the Port State Agency. But we've been trying to work with that relationship, which does not go beyond 'you have a violation.' We are trying to improve it, but it will take time because it has malfunctioned for ages. Then people can talk to each other, because that prevents learning. (P-9, EEA)

Furthermore, in the absence of crew cooperation, finding rest/work hours deficiencies remains tedious because it requires intensive cross-checking.

Then we will start following up and asking them if you have a cargo log. Yes, okay, can I have a copy of it? And, you know, safety reports, bunker receipts. Then we start digging in. And then it goes, so usually it starts from this that they talk to us. (P-9, EEA)

(3) Quasi-absence of reporting to flag authorities. Respondents suggested that seafarers must be more proactive in reporting issues related to rest/work hours to trigger flag State enforcement actions.

Sea workers need to complain. If I received complaints, we might act. (P-1, non-EEA)

[…] but if the seafarer raises a valid complaint to the flag, then the flag will take action against the ship owner, […]. We would investigate that, and, most probably, make a ruling or a determination that the master was within his rights to stop work, and he did not breach a seafarer employment agreement because the seafarer is not properly rested, so he is entitled to all his rights. (P-5, non-EEA)

4.3.4 Building trust between authorities and crews

Building trust with the crew is seen as an opportunity to collect valuable feedback on ship quality and crew operations because seafarers possess the most direct and intimate relationship with ships and their operations. If they feel constrained in their reporting by a blame culture, such information may not circulate.

A few flag State representatives emphasised feedback deficits from seafarers. Without complete and honest feedback, flag State surveys in their present form cannot unveil complex and sensitive issues such as working time implementation, which is at the crossroads between work organisation, staffing, ship quality, and operation. Trustful and efficient feedback is essential to enhance transparency and allow inspection regimes to observe ship operation realities.

First, the complaint mechanisms do not seem to function as expected, probably due to mistrust between seafarers and flag States.

The feedback mechanisms for complaints are not working as intended. (P-1, non-EEA)

Of course, they [seafarers] know the consequences they may encounter if they apply a complaint and the fact that seafarers prefer to apply a complaint directly to the administration or PSCO. In my opinion, this is the real objective evidence that the complaint procedures do not work, […]. (P-16, EEA)

Second, flag States recognise the value of collecting seafarers' feedback and deploy strategies to enhance crew interaction.

> […]. *So, the dialogue is part of the inspection, a dialogue with the crew. […] It can be, do you know how to launch the lifeboat? Are the drills always in your rest hours? Or are you having drills during your working hours? And do you feel tired? And if they start to open up a bit and say, I feel tired, I'm always working during the night, then we can easily look at the rest hours to see if there's any violation. But the dialogue is always a good thing, because then we can go to the ship owner or the captain and say, maybe you should look at the working arrangements and so forth. (P-6, EEA)*

Establish quality dialogue also participate in the training of inspectors, who develop better knowledge of ship operation.

> *When we train our inspectors, it's always to follow one more experience inspector. And then it's very important for us that they understand how to ask open questions, and not only yes and no questions, and it's important to be observant and to let the crew do most of the talking, and make the crew talk about their work, just what they normally do on board the vessel. For example, how do you clean the room? If that's the duty, or how to maintain a lookout? What about if you have to work with chemicals and so forth? Just let them explain everything. […]. So, a lot of dialogues. (P-6, EEA)*

An EU flag State reported strengthened collaboration with seafarers over the past 3-4 years to improve the quality and reliability of deficiency reporting. Educating crew and inspectors has been instrumental in establishing mutual trust. In practice, the program seems successful in circulating a lot of information, especially on working time.

> *[…] now the seafarers start to trust us because we have trust after the last three or four years; we start to receive information from them. [confidential details]. It comes now all the time; we hear much more information and complaints than we did before because we've been building up and working a lot on this matter, and they have started trusting us. (P-9, EEA)*
>
> *Now, we get all the MLC, for example, the latest inspection on some big passenger vessels. I received like [confidential] MLC complaints, and they can say, 'Hey, can we discuss a little bit privately?' And they told us about all these deficiencies and how it's involved in and adjusted all these kinds of matters. Because now they start trusting us and they hear from the unions that they can rely on us, that we try to fix it. (P-9, EEA)*
>
> *So, we've been working a lot with this matter, and the same goes for the rest hours, that even on some vessels, the crew might come and say, hey, because we've been sailing together like years ago, so 'I get the salary, but the captain adjusts my records.' And I ask, 'Can you prove it?' Because I need something to show that it happened. So, then I just asked him, 'When you write down your hours, just please take a photo, a screenshot, or whatever, and then I have something to check in', you know, a reference for inspection on the records. So that's how they'll tell me that there's a problem. (P-9, EEA)*

The success of this flag State's program is founded on a cultural shift. Seafarers are not looked at from above but as resourceful partners.

4.4 Working time recommendations: View of flag States

Flag State representatives provided recommendations for better implementing working time regulations and addressing fatigue at sea. Six main themes emerged during the analysis of data:

(1) The manning bottleneck;

(2) The overtime attractor;

(3) Other fatigue drivers;

(4) The technology option;

(5) Inaudible seafarers; and

(6) Improvements in enforcement.

4.4.1 The manning bottleneck

All flag State representatives questioned current manning levels, suggesting inappropriate safe manning certification practices.

> *Labour manning is not the same aim as the minimum safe manning, which does not guarantee fatigue and rest hours but vessel safety. (P-1, non-EEA)*

> *The safe manning document is issued once per time, and the activity of the vessel could not be in the knowledge of the authority at the time that we issued the document. I cannot properly study the activity of a vessel when I issue a safe manning document. I don't know what the vessel's schedule will be one year later or six months. (P-15, EEA)*

> *At the beginning of the year, we held a big conference on the well-being of seafarers, and we also asked some of the younger seafarers to give their perspectives. And one of the things that came out of those consultations was that some of them feel that if the minimum safe manning were higher, there would be fewer issues. (P-2, EEA)*

> *What we see and know is that on bigger ships, like container ships we always have more than the minimum. That's the reality, but on small ships, coastal, because we have a two-watch system, it's difficult to increase; the availability of accomodation is one of the reasons. […] especially if you have container ships, feeder container ships in two-watch systems, it's sure a big problem. But we have not such ships under our flags anymore. That's why. (P-21, EEA)*

Ironically, flag States representatives responsible for issuing manning certificates are questioning the current manning levels and criticising the very certification practices they enforce.

4.4.2 The overtime attractor

The salary structure of the seafarers was repeatedly identified as a hindrance to implementing working time. Specifically, a participant described the impact of fixed overtime systems on work and rest hours compliance as 'the enemy of compliance with rest hours.' Many others highlighted the persistent tension in the maritime sector between regulating working hours to prevent fatigue and the economic incentives for seafarers to work overtime.

> *It works well; seafarers rely on overtime to increase their salaries. (P-12, non-EEA)*

> *If you look at the contract for the ITF agreement, they have 44 hours per week, which is normally standard working hours, and then they have 103 hours of overtime pay. And very often, the owner likes to let them work 103 hours because they have got paid for this. So, if you add this to 103 hours, you have no overtime work, which could be an issue here, right? Because you want to be paid more. So this is quite a lot of hours, and then you must take a Sunday, for example, to reach this overtime. (P-7, EEA)*

> *I think the great majority of ships actually have a conflict. As per the SEA [Seafarer Employment Agreement], there is a fixed overtime, usually 104 hours per month, so they can request the crew to work even on holidays. […] So because of this fixed overtime system, it can easily break the minimum hours of rest regime. […] Even if they work more than 124 hours, they can only get a 104 overtime allowance, which is fixed overtime. So, it is international and widely accepted. This can contribute to violating the rest standards and not complying with standards. (P-13, non-EEA)*

> *But that means that, in practice, the seafarers could work up to 91 hours, 91 minus 48 hours, six days a week; if they work a six-day week, that's 43 hours of overtime. So 43 hours of overtime a week, by four, that's about 172 hours of overtime a month they would normally work; that's about 172 hours of work, and they are guaranteed 103 hours of work. (P-5, non-EEA)*

[…] You know, how many of these complaints just complain because they were not paid, because if there are some provisions in their contractual agreement. […] 'I don't want the one day off I work or clean the cargo holes because I get a bonus, and that will not be reported,' So, you know, so many things need to be considered, but we can't control these things as a flag State. (P-8, non-EEA)

Several participants suggested that seafarers tend to prioritise money over rest.

If you talk to the seafarers, right? Many seafarers, they say, No, no, no, we want to stay longer. We want to stay two years on board the ship. I say, Why? Because we want to earn money. We want to buy a house. We want to, you know, do this and do that when we go home. I said, 'No, you can't do that because your health is at risk; if you stay for two years on board the ship, you have to go home at the end of 11 months. You can't stay.' And they feel sad that they can't. (P-5, non-EEA)

But some of the International Transport Workers Federation associations are also complicit. They attend both the IMO and the ILO, and they want to prevent fatigue. On the one hand, we want to prevent fatigue; on the other hand, the ITF wants seafarers to make as much money as they can, and seafarers do as well. So, the seafarers have been encouraged to work overtime. So there are like conflicting interests. (P-18, EEA)

Despite previous comments, the ITF has consistently raised working-time issues at the IMO and the MLC's Special Tripartite Committee (STC). At the April 2025 STC meeting, seafarers' proposals sought to align maximum working hours and minimum rest periods, including increasing weekly rest from 77 to 96 hours and limiting work to 72 hours (Proposal 6), and providing compensatory leave or shorter voyages for watchkeeping and short-voyage seafarers (Proposal 7). Both proposals were rejected due to opposition from shipowners and some flag States. However, the STC agreed to establish a Joint ILO-IMO Tripartite Working Group to address seafarers' working-time issues and review relevant provisions of the MLC, 2006, and STCW Convention.

Case Study 2

In Spain, the regulation distinguishes overtime limits between national and international registries (Case Study 2). While the amount of overtime possible is limited in the first registry, there is no limit in the international registry, allowing longer working hours for financial benefits.

Case Study 2. A national legislation on overtime not applicable to all seafarers

In Spain, the National Legislation regulates hours of work for all seafarers, allowing a maximum of 12 hours of daily work. In alignment with the hours of work of MLC, 2006, the maximum weekly hours of work are 72 hours, including extraordinary hours. Indeed, the maximum hours of work regime applies to seafarers working on vessels flying the Spanish flag, both the national and the international (i.e., Registro Especial de Buques de Canarias, REBECA).

However, the restriction concerning a maximum number of extra hours for any worker (max. 80 hours per year) applies to sea workers sailing under the national flag but not under the International Registry, as per Royal Legislative Decree 2/2011, of September 5, approving the Revised Text of the Law on State Ports and the Merchant Navy [95].

Case Study 3

In the fishing sector, the working time challenges are connected to the wage structure of the sector and workload peaks due to moments related to fish catch or processing (Case Study 3). Indeed, the Food and Agriculture Organization (FAO) reference study on fishing vessel safety clearly pointed out the issue: 'There is no doubt that the catch-share motivates fishermen to work harder and for longer hours, which in itself contributes to risk through fatigue. It also increases the motivation to go fishing under adverse weather conditions, to take risks while fishing […].' [96]

Case Study 3. Longer working time as a reward for fishers

The fishing sector prompted less discussion than shipping. While many respondents were not familiar with working time regulations for fishing, some highlighted how catch share may be promoting long work hours.

The interests of the shipping companies might well be different to the interests of the seafarers themselves. Fishing is a very complicated area because […] the share of the catch can often be directly linked to the fishers themselves. So the longer that the fisher works, the more money they get. […] it is a more challenging environment, whereas the seafarer working on a container ship isn't going to get more money, if they work a longer shift, there isn't that incentive there for them to work outside. So I think that's a complication; one of the differences I see between the work in the fishing tripartite Working Group and the MLC tripartite working group is this issue of reward for longer working hours. (P-11, non-EEA)

We haven't actually ratified the work in the fishing convention yet, but we are currently discussing it. […] we conducted research on how to implement work in the fishing convention […]. Currently, the fishing industry is actually not happy with ratifying the convention, particularly for smaller fishing vessels, because most fishers are small tonnage (domestic) and do not want limits; their economy depends on how much they fish. So due to employment conditions, no standards for fishers, except for those who go to the ocean, who want limits, but the rest do not want. (P-13, non-EEA)

4.4.3 Other fatigue drivers

Participants considered that working time regulations cannot be updated in isolation because other factors also contribute to seafarers' fatigue and workload, such as:

(1) The onboard period length is viewed as a key contributor to fatigue management.

Fatigue gradually builds up over a period of time. So if these seafarers are on board for long periods, fatigue will build up, and there could be an accident. So we recommend to ship owners, if you have seafarers on voyages with less than 72 hours, where you cannot give them one day of rest a week because of the nature of the trade of that ship, then the seafarers should be engaged for short periods on board, up to no more than four to five months and a longer leave period. (P-5, non-EEA)

(2) Improving working and living conditions on the ship can support fatigue management.

[…] I think, in general, improving the conditions of work for seafarers would help to reduce fatigue. In the end, definitely not more regulations [working time]. (P-14, non-EEA)

(3) Many suggested that paperwork significantly burdens ships. Digitalisation efforts may reduce this workload.

The market has been evolving in terms of less and less people. So people are working more and more. We are trying to do our best in terms of the facilitation committee and also the convention, and also in terms of digitalization and e-certificates and everything to alleviate the burden of the master and the chief engineer; well, actually, the entire crew, because sometimes they've got the flag State, they've got class, they've got the Port State. So it's really a nightmare. (P-17, EEA)

(4) Considering the multiplication of training for seafarers, flag State respondents suggested focusing on training periods when seafarers are onboard to free their time when at home.

During our conference, several seafarers have said they would appreciate to having some of their training onboard, online. Some might actually prefer that, especially the younger generation, who want to have their training while on board. And then when they're home, they don't have to spend a whole week in training if they're just home for a few weeks. (P-2, EEA)

4.4.4 Technology options to monitor work and rest hours compliance

When conscious of the extent of rest/work hours violations, several participants emphasised the deployment of tamper-proof technologies to facilitate recordkeeping and verification.

The approach we have of registering and controlling hours of work in the industry is rudimentary; we would need more sophisticated methods to help with the implementation. (P-1, non-EEA)

The technology is there to record working on board. […] It could be implemented, but of course, it comes at a cost, like fingerprint recognition technology, which you can use to zap yourself onto the bridge and into the engine room. You recorded as entering the engine room would serve a number of functions, in that, if you've gone into the engine room, you're soon to be working. […]. Maybe we need to be more technologically advanced than a pen-and-paper program to record seafarers' working time. It's an enhanced spreadsheet, the ones that I've seen. The ISF produced some programs for recording that are very clever, but it again relies on people putting information in. (P-18, EEA)

It is under discussion to change the recording system to avoid adjustments and be more reliable, like an electronic system that cannot be altered and with direct access from labour inspectors remotely and in real- time. (P-10, EEA)

4.4.5 Inaudible seafarers

The majority of the participants agreed that seafarers should report their concerns, especially when reiterative violations are observable. However, fears, lack of awareness, and a lack of knowledge about their rights seem to prevent seafarers from speaking up.

One way to go is to educate officers so they really understand the working environment, and especially MLC. […] But very often they don't know anything about MLC. […]. And this is not only MLC certificates, it is also certain about safe manning documents […]. This is an education problem, so if officers have more education about the value of the certificates, what it means, and especially MLC, for example, they have no idea. […] is a normal situation when I ask for MLC. 'What is MLC?' they respond. (P-7, EEA)

[…] that this is a sufficient level of fatigue, what we can tolerate, or whatever. One way to tackle that is by providing proper information and education for seafarers. […] MLC is not part of the training because it's not on the STCW side. Same with occupational health and safety matters. It's not part of the training because it's not in the STCW package. All this goes hand in hand, and they don't discuss anything about the working hours on STCW training and what it caused, the fatigue, and what is causing it. So, my point of view is that the whole STCW system should be reviewed, so this should be implemented in the training, the MLC part of that. (P-9, EEA)

Education is the other important thing. When we make seafarers aware of their rights, they become more outspoken. Okay, they report to the administrations. That's how you get the information. […] when we as an industry, we make, we see seafarers more aware of their rights and regulations they report. (P-8, non-EEA)

We also see that sometimes the seafarers are not really aware of the regulations, and we have to explain again and again and again. (P-21, EEA)

Some respondents also deemed it necessary to extend the educational aspect of seafarers' labour and rights matters, including work and rest hours, to other stakeholders like charterers and shipping companies.

Let's say it should account for the charters and the persons in the companies who plan the timetables. The same goes for the liner traffic. […] but they don't count the other work, what happens on the ship. So it's mostly the port operations and the time schedule causing [fatigue] but not the days at sea. (P-9, EEA)

A respondent suggested a cultural shift to encourage the seafarers to speak out.

[…] it is pretty sure that what is recorded in the papers is different from the reality and what happens on board. […] because they are afraid.[…]. So for this reason, culture! Because something must be changed in the culture of the ship, in the ship owner, and in the capacity of the seafarers to have the possibility to explain, to ask, to apply a complaint. (P-16, EEA)

Both EEA and non-EEA flags converged in pointing out the role of IMO and ILO.

> *If fatigue is such a big question, we maybe […] should discuss it as we do with other important issues like harassment and violence or about maritime crimes. So, in the triparty, it's called the joint working group, the IMO ILO triparty joint working group. […]. So I think that if the issue is important, it should be discussed, and then the first step would be to try to make some guidelines. And then eventually, that often happens, is that the guidelines are, at a later stage, implemented in some way or the other into the MLC. (P-6, EEA)*

> *We had a joint working group with ILO and IMO back in February this year, and awareness was the keyword. Make the seafarers aware of their rights and the role of their intervention. […]. My suggestion would be that similar joint working groups, as we had back in February, could be used as a tool to address [fatigue] because a lot of good things came on. (P-8, non-EEA)*

4.4.6 Improvements in enforcement

Respondents support effective enforcement mechanisms. Inspection campaigns and stringent fines for facing violations may support compliance and the fight against recordkeeping fraud.

> *Maybe some measure will be more frequent inspections with respect to working hours. So that will give the ship owner some awareness that the flag State is inspecting this and that they should follow the standards to enable the crew and the ship to be safe. (P-4, EEA)*

> *Some concentrated inspections regarding crew members or ships to include verifications on rest time. (P-19, non-EEA)*

> *From the point of view of the flag State, one measure that we may consider is of having targeted and more severe administrative fines on this issue. (P-3, EEA)*

> *It depends always on the monitoring and verification of the requirements. And, of course, you have to always get into a discussion with the ship owner and raise awareness. […]. Our approach is at first to get in contact with the shipowner to discuss the problem and to raise awareness; preventive measures we do for the first time, and if we see there's a second and a third time, of course, we have to increase our measures, like penalties if not improvements. (P-21, EEA)*

Some flag State representatives said shipping companies should be held accountable for working time deficiencies.

> *[companies] need to be more involved and do a monthly verification in their office. If that is not done, this blatant falsification could continue and go undetected. And if it goes undetected, there will be an accident. […]. It's a company that is held accountable, not the ship, not the seafarer; the seafarers can't be held accountable because they have their own restrictions on board. It's the company that has to step in and say, 'Something is not right here; you guys are working in excess, and we are not managing the ship correctly. And what do we need to manage the ship? Do we need to reduce your contracts, put additional seafarers on board, or take some other action? (P-5, non-EEA)*

5 Results from the survey database analysis

The 2024 WMU global study 'Quantifying an inconvenient truth' confirms that 53.3% of surveyed seafarers work, on average, more than 72 hours per week. Additionally, 11.7% of seafarers report working more than 91 hours. Finally, this unprecedented sample size research also highlights that only 10.4% of seafarers benefit from one day off per week [11]. However, since the report presents the overall average, it does not differentiate between flag States. Therefore, the data is reanalysed with flags as influencing factors in shipping working time practices.

The analysis assessed the following variables by flag: (1) average weekly work hours and weekly day off; (2) monthly non-compliance and work/rest records adjustment.

For comparison, flag States were categorised into three groups: EU flags vs non-EU flags (category A), EEA flags vs non-EEA flags (category B), and FoC vs non-FoC registries (category C).

5.1 Weekly hours of work and weekly day off

After computing the data, the following was observed for each variable:

(1) The weekly work hours between the various flag categories were similar (Table 5). The average reported by seafarers is 74.9. The data processing and analysis did not show statistically significant differences between the flag groups.

- EU and non-EU flags (χ^2 (4)=3.495, p>0.05).
- EEA and non-EEA flags, (χ^2 (4)=5.438, p>0.05).
- FoC and non-FoC registries (χ^2 (4)=7.691, p>0.05).

Table 5. Workweek hours per category of flag State (n=5,179)

	<48 n (%)	*>48-72 n (%)*	*>72-91 n (%)*	*>91-98 n (%)*	*>98 n (%)*	*χ2 (df)*	*P (Cohen's d)*	*x̄ (SD)[a]*
Category A						3.495 (4)	>0.05	
EU flags	56 (6.5)	321 (37.4)	376 (43.8)	41 (4.8)	64 (7.5)			75.7 (26.0)
Non-EU flags	328 (7.6)	1,712 (39.6)	1,778 (41.1)	203 (4.7)	300 (6.9)			74.7 (27.6)
Category B						5.438 (4)	>0.05	
EEA flags	67 (6.7)	368 (36.9)	443 (44.5)	44 (4.4)	74 (7.4)			75.6 (25.1)
Non-EEA flags	317 (7.6)	1,665 (39.8)	1,711 (40.9)	200 (4.8)	290 (6.9)			74.7 (27.9)
Category C						7.691 (4)	>0.05	
FoC	179 (7.2)	976 (39.3)	1,009 (40.6)	124 (5.0)	197 (7.9)			75.0 (24.9)
Non-FoC	205 (7.6)	1,057 (39.2)	1,145 (42.5)	120 (4.5)	167 (6.2)			74.8 (29.5)

[a]The average weekly work hours of the total sample were 74.9.

(2) Regarding the percentage of seafarers not having a full day off during their onboard periods, the results indicated statistically significant differences between the groups. Still, categories gravitate around the average (percentage of not having 1 day off = 79.6%), and effect sizes were insignificant (below 0.1 in all cases), indicating low practical significance (Table 6).

- The percentage is lower in non-EU flags (79.1%) compared with EU flags (81.9%) (χ^2 (4) = 11.962, p<0.05).
- The percentage is lower in non-EEA flags (78.9%) compared with EEA flags (82.5%) (χ^2 (4) = 19.765, p<0.01).
- The percentage is lower in non-FoC (77.5%) compared with FoC registries (81.9%) (χ^2 (4) = 35.173, p<0.01).

Table 6. Weekly day off per category of flag State (n=5,181)

	Once every week n (%)	*Once every month n (%)*	*Once every 3 months n (%)*	*No have a day off[a] n (%)*	Other n (%)	*χ2 (df)*	*P (Cohen's d)*
Category A						11.962 (4)	<0.05 (0.05)
EU flags	64 (7.5)	42 (4.9)	12 (1.4)	703 (81.9)	37 (4.3)		
Non-EU flags	478 (11.1)	165 (3.8)	72 (1.7)	3,421 (79.1)	187 (4.3)		
Category B						19.765 (4)	<0.01 (0.06)
EEA flags	69 (6.9)	50 (5.0)	14 (1.4)	822 (82.5)	41 (4.1)		
Non-EEA flags	473 (11.3)	157 (3.8)	70 (1.7)	3,302 (78.9)	183 (4.4)		
Category (C)						35.173 (4)	<0.01 (0.08)
FoC	251 (10.1)	101 (4.1)	24 (1.0)	2,034 (81.9)	75 (3.0)		
Non-FoC	291 (10.8)	106 (3.9)	60 (2.3)	2,090 (77.5)	149 (5.5)		

[a]The total sample percentage of not having a full day off during the onboard period was 79.6.

5.2 Monthly non-compliance and adjustment of work/rest hours

After computing the data, the following was observed for each variable:

(1) The monthly non-compliance instances were similar across the different categories of flags (Table 7). Overall, 88.3% of seafarers exceeded working time limits at least once monthly. Comparison across flag categories revealed no statistically significant variation in these non-compliance rates.

- EU and non-EU group, Linear by linear association=0.699, p>0.05.
- EEA group and non-EEA group, Linear by linear association=0.006, p>0.05.
- FoC and non-FoC, Linear by linear association=2.778, p>0.05.

Table 7. Monthly non-compliance per category of flag State (n=4,846)

	0 times n (%)	*1-2 times n (%)*	*3-5 times n (%)*	*6-10 times n (%)*	*>10 times n (%)*	*χ2 (df)[a]*	*P (Cohen's d)*	*% exceeding at least once a month[b,c]*
Category A						0.699 (1)	>0.05	
EU flags	100 (12.3)	154 (18.9)	286 (35.2)	125 (15.4)	148 (18.2)			87.7
Non-EU flags	466 (11.6)	941 (23.3)	1,232 (30.5)	743 (18.4)	651 (16.1)			88.4
Category B						0.006 (1)	>0.05	
EEA flags	116 (12.3)	194 20.5)	330 (34.9)	142 (15.0)	164 (17.3)			87.7
Non-EEA flags	450 (11.5)	901 (23.1)	1,188 (30.5)	726 (18.6)	635 (16.3%)			88.5
Category C						2.778 (1)	>0.05	
FoC	284 (12.3)	497 (21.4)	699 (30.2)	425 (18.3)	413 (17.8)			87.7
Non-FoC	282 (11.2)	598 (23.7)	819 (32.4)	443 (17.5)	386 (15.3)			88.8

[a]Linear by linear association test is used.

[b]The total sample percentage exceeding the working time limits at least once a month was 88.3.

[c]The variable 'exceeding working time limits' was also analysed as continuous using the Mann–Whitney U test, providing the same results as for the categorial variable, i.e., not displaying significant differences between the groups of comparison.

(2) Concerning the adjustment of records, the total sample percentage of seafarers who reported work/rest adjustment is 64.3%. When verified by flag categories, the adjustment of records was similar across the categories (Table 8).

- No significant association between the type of flag (EU and non-EU) and whether or not seafarers would adjust (χ^2 (2)=0.032, p>0.05).
- No significant association between the type of flag (EEA and non-EEA) and whether or not seafarers would adjust (χ^2 (2)=0.013, p>0.05).
- FoC group adjusted more frequently (over the 64.3% total sample adjusting) than the group of non-FoC (below the 64.3% total sample adjusting), showing this difference as statistically significant (χ^2 (2)=8.782, p<0.05). However, the effect size was very small (below 0.1), indicating a low practical significance of the difference.

Table 8. Adjustment of work/rest records per category of flag State (n=4,777)

	Adjusting records-Yes n (%)[a]	*Adjusting records-No n (%)*	*Adjusting records-Other n (%)*	*χ2 (df)*	*P (Cohen's d)*
Category A				0.032 (2)	>0.05
EU flags	517 (64.3)	253 (31.5)	34 (4.2)		
Non-EU flags	2,553 (64.3)	1,257 (31.6)	163 (4.1)		
Category B				0.013 (2)	>0.05
EEA flags	600 (64.3)	294 (31.5)	39 (4.2)		
Non-EEA flags	2,470 (64.3)	1,216 (31.6)	158 (4.1)		
Category C				8.782 (2)	<0.05 (0.04)
FoC	1,484 (65.2)	683 (30.0)	109 (4.8)		
Non-FoC	1,586 (63.4)	827 (33.1)	88 (3.5)		

[a]The total sample percentage of adjusting their work-rest records was 64.3.

6 Main conclusions

International law firmly establishes the central role of States in upholding and enforcing treaty obligations. Article 26 (*Pacta sunt servanda*) of the 1969 Vienna Convention on the Law of Treaties states that '[e]very treaty in force is binding upon the parties to it [States] and must be performed by them in good faith.' This principle is particularly relevant in maritime law, where the UNCLOS, in general, and the MLC, 2006, enshrine this responsibility. The latter, containing regulations on seafarers' working time, explicitly mandates that 'Each Member [flag State] shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention.'

However, despite these legal obligations, research suggests a deep integration of industry interests in shaping regulatory practices. Irrespective of flags, the prevailing narrative of 'There is no alternative but to comply with the industry paradigm' seems a well-established motto, contributing to the *status quo* on very long working hours at sea.

First, by

- **Normalisation of unfavourable working time standards.** The 'minimum hours of rest' standards apply to nearly all seafarers. The data reveals that the overwhelming majority of flag States choose the lowest acceptable regulatory standards for seafarers. The social acceptance of unsafe and unhealthy long working hours jeopardises decent working time at sea and downgrades seafarers compared to shore-based workers.
- **Neglect of human factors and fatigue sciences**. Despite ample scientific research conducted in many sectors demonstrating the relationship between working time and fatigue, regulatory approaches appear to undervalue or question the strength and operational relevance of this evidence.
- **Integration of employers' perspective.** Respondents' answers suggest a closed alignment with employers' interests and narratives. They integrate and overvalue categories such as the 'competitiveness-flexibility principle' and the 'legislative-easy to follow principle' over the very purpose of the regulations, including occupational safety and health and well-being. Consequently, working time standards applicable in the sector contrast with the ILO's agenda on decent work and deviate from attention to 'the fundamental elements that must be taken into consideration if new standards on working time are envisaged: protection of the health and safety of workers, and the preservation of a reasonable balance between working and private and family life (page 329).' [8]

Second, by

- **Implementation weaknesses.** Flag States respondents reported insufficient objective evidence about work and rest hours breaches. Seafarers and their representatives rarely complain about working time. The low compliance level reported by researchers for two decades remains barely detected by authorities in complaints and surveys.
- **Limited resources and training**. Resource allocation is critical for enforcement activities. However, there is a lack of resources, staffing, and allocated time to conduct in-depth inspections. These structural limitations contribute to the underdetection of violations and allow problematic working time practices to persist.
- **Lack of feedback mechanisms**. Effective feedback on breaches is critical for ensuring compliance. However, weak reporting and enforcement mechanisms constrain flag States'

ability to respond adequately. Regulations require flag States to ‘review and may withdraw, as appropriate, the minimum safe manning document of a ship which persistently fails to be in compliance with rest hours requirements.’ In practice, the absence of effective feedback weakens the regulatory framework, allowing non-compliance to persist and reinforcing the *status quo* on very long working hours for seafarers.

These challenges suggest that the traditional authority of flag States in implementing and enforcing their commitments at sea may be eroding.

Before any change, respondents suggest integrating specific points related to fatigue and working time in the sector into any discussion.

- **Preference for higher salary.** Respondents indicated that seafarers tend to prioritise wages and contract duration over working time considerations. Overtime incentives may be a key parameter leading to overwork and deterring sea workers from reporting. Instead of reviewing working time limits, respondents recommended improving wages, shortening contract duration, or providing more holidays to compensate for long work hours on board.
- **International norms needed for half.** Irrespective of the flag, half of the respondents showed an openness to change. However, they stressed that any modification must be international to ensure a level playing field. The other half questioned any revision, citing insufficient and inconclusive evidence regarding the inadequacies of the current limits.
- **Short-sea shipping in question.** While respondents considered that working time standards are not generally excessive, many highlighted the compliance difficulties and fatigue on ships engaged in coastal trade and those operating with multiple port calls within short timeframes.

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Appendix A

Table A1. In-depth interviews details

Code[a]	Competent Authority	Department	No. of inter-viewees	Length of inter-view (hh:mm)	Type of interview		Country	
					Digital	Written	EEA	Non-EEA
P-1	Maritime Authority	General Directorate of Seafarers	1	01:45	x			x
P-2	Directorate General of Shipping	Legal Affairs, Liability and Human Element & Flag State Department	2	01:30	x		x	
P-3	Shipping Deputy Ministry	Directorate Development & Competitiveness of Shipping Cluster	2	01:15	x		x	
P-4	Ministry of sea transport and infrastructure	Maritime Safety Department	1	01:24	x		x	
P-5	Registry	Maritime Operations	1	01:27	x			x
P-6	Maritime Administration	Seafarers working conditions & Ship Survey	2	01:33	x		x	
P-7	Maritime Administration	Flag-PSC inspection Department	1	01:32	x		x	
P-8	Maritime Authority	Seafarers & Manning Department	2	01:41	x			x
P-9	Maritime Authority	Inspectorate Department	1	01:17	x		x	

Code[a]	Competent Authority	Department	No. of inter-viewees	Length of inter-view (hh:mm)	Type of interview		Country	
					Digital	Written	EEA	Non-EEA
P-10	Ministry of Labour and Social Economy	Labour and Social Economy Inspectorate	2	01:15	x		x	
P-11	Maritime Authority	Seafarers H&S Maritime & Security and Health Operations	2	01:27	x			x
P-12	Marine Department	Seafarers and Shipping Development	1	00:55	x			x
P-13	Ministry of Oceans and Fisheries	Mariners' Manpower Research Institute	1	01:28	x			x
P-14	Ship Registry	Department for Enterprise	1	01:35	x			x
P-15	Ministry of Maritime Affairs and Insular Policy	Seafarers' Labour Directorate	1	01:17	x		x	
P-16	Coast Guard & Maritime Directorate	Port State Control – Flag State Control Coordination & Safety Navigation	3	01:44	x		x	
P-17	Maritime Administration	Manning, Seafarers & Social Affairs	2	02:15	x		x	
P-18	Department of Transport	Marine Survey Office	1	01:19	x		x	
P-19	Maritime Administration	Legislation and Implementation regarding Crew Management	2	-		x		x

Code[a]	Competent Authority	Department	No. of inter-viewees	Length of inter-view (hh:mm)	Type of interview		Country	
					Digital	Written	EEA	Non-EEA
P-20	Maritime Administration	Maritime Safety and Security	1	-		x		x
P-21	Maritime Administration	Seafarers' Working and Living conditions	2	01:00		x	x	

[a] Codes were assigned randomly to interviewees (P=Participant).

Appendix B

QUESTIONNAIRE

TO UNDERSTAND FLAG STATES' REGULATORY CHOICES ON WORKING TIME

This questionnaire consists of two parts:

- Section I: To collect flag States' representatives personal, educational and work background information.
- Section II: To collect flag States' representatives' views on the regulatory choices on working time and its implementation

Interview Questions Guide

Part I: Background Information

This part covers questions related to the participant's personal, educational, and work background.

Sociodemographic details and job role

Gender	
Age	Years
Nationality	
Educational level: ● Deck Officer certificate ● Engineer certificate ● Other maritime education (please specify) ● Non-maritime bachelor ● Non-maritime master Other non-maritime education (please specify)	
Current job role (duties and responsibilities)	

Experience in the current job position	
Flag	

Part II – Flag States' views on working time standards

This part covers questions related to flag States' views on work and rest hours regulation and its implementation.

Flag regulatory choice and influencing factors

N.	*Question*	*Goal*
1	What are the working time standards in your country? Is the working time standard per STCW, 1995, MLC, 2006, or both?	To explore awareness of regulatory choice (i.e., regulating hours of work or regulating hours of rest, 'others').
2	How has this choice been made?	To explore awareness of regulatory choice (i.e., regulating hours of work or regulating hours of rest, 'others').
3	Are regulations the same on the national register and the international register? (ask when national and international registry)	To explore differences in regulatory choices between first and second registries when these two exist in the country.
4	Why did the administration select this particular standard? Is there any specific justification?	To understand the reasoning behind the regulatory preference (factors influencing) Explore national regulation, stakeholders' consultation, cultural and societal norms, if changes over time, etc.
5	How does the social dialogue with unions and employers influence labour standards	To explore how flag States engage in social dialogue on labour matters and the power balance.

	in general and working time standards in particular?	
6	The ILO and EU regulatory framework allow seafarers to work up to 91 hours per week (MLC, 2006) and fishers up to 98 hours per week (C188). How do these standards become accepted and incorporated in the national framework? How has this insertion in domestic law been justified?	To explore the understanding of the implications of the regulatory choice for work hours limits.
7	Does your regulation strictly mandate one day off per week or not? Why?	To explore the understanding of the implications of the regulatory choice for work hours limits.
8	Is any deviation or exemption possible to the MLC, 2006 (e.g., type of ships or navigation, etc.)?	To understand deviations from the regulatory choice.
9	Have you received feedback on working time implementation from Port State? If yes, what, how, follow-up? Would strengthening the FS-PS relationship be necessary in this matter?	To explore the feedback mechanisms between port State and flag State concerning working time

Fatigue mitigation efficiency

N.	*Question*	*Goal*
1	Do you think these limits efficiently address fatigue as expected by MLC, 2006 and STCW? Should these standards be complemented?	To explore how flag States take [into] account […] the dangers posed by [the] fatigue of seafarers when formulating national standards (Genuity when endorsing a 91-hour). Note: Studies have expressed concerns regarding the adequacy of these limits in meeting fatigue mitigation objectives (e.g., in comparison with other modes of transport).

Flag suggestions for implementing working time regulations and addressing work/rest adjustment

N.	*Question*	*Goal*
1	Once these regulations are incorporated into national legislation, how does the flag State verify or ensure their implementation and compliance on board?	To explore flag State mechanisms in place to meet the requirement '[…] review and may withdraw, as appropriate, the of a ship which persistently fails to be in compliance with rest hours requirements.'
2	Have you (or your flag) ever received any complaint related to recurring work/rest non-compliance? If yes, what actions were taken?	To understand the flag State oversight role (i.e., handling non-compliance reports, reviewing minimum safe manning documents).
3	Research and casualty investigations suggest that these thresholds are breached, leading to work-rest records often adjusted. Can you provide suggestions on how flags could contribute to better implementing work/rest hour requirements and reporting?	To explore Flag acknowledgement in adjustment of work/rest records and suggestions for a better implementation. Note: A seafarers' global survey finds that '65% adjust and exceed these norms by averaging 74.9 work hours per week.'

Flag responsibilities and action

N.	*Question*	*Goal*
1	How can maritime stakeholders be coordinated to address fatigue at sea?	To explore signs to improve working time standards (e.g., working time limits, 6On/6Off watch protocol, contract length, collective bargaining).
2	Would it be realistic to modify the working time regulation at the national level?	To explore signs to improve working time standards. Explore flag competition, rights of seafarers, humanity, retention, length of contract, seafarers' remuneration, etc.

A working time comparative analysis – Examples of labour gaps between sea and land workers

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Executive summary

This report compares maritime and land-based workers in the European Union (EU) regarding working time and discusses certain aspects of social dialogue. Using EU and European Economic Area (EEA) regulatory frameworks, empirical data, and case studies, the analysis demonstrates that seafarers and fishers are systematically exposed to working conditions that would be considered unacceptable ashore and in other transport sectors. The findings reveal persistent regulatory inconsistencies, deficient implementation practices, and an imbalanced social dialogue, all of which contribute to widespread excessive working time and chronic fatigue among sea workers.

Working time: a structural labour gap

Despite extensive scientific evidence linking long working hours to chronic fatigue, cardiovascular disease, impaired cognitive performance, and occupational accidents, maritime working time regulations widely diverge from those governing land-based workers and other transport workers. The analysis shows:

- Maritime rules allow weekly working hours (from 72 to 91/98 hours), meaning far beyond what international health research deems safe (>50 hours/week) and what the ILO defines as decent working time (>48 hours/week).
- With an average of 74.9 hours of work per week, statistical indicators clearly demonstrate extreme overexposure of seafarers to long hours (>48h/week) and very long hours (>60h/week). More than 90% of seafarers work long hours, and about 80% exceed 60-hour workweeks.
- Simulated estimates reveal that seafarers' annual working hours surpass those recorded in all comparison countries and, in many instances, approach double the workload of shore-based employees and other economic sectors.
- EEA and non-EEA-flagged vessels show no difference. Consequently, excessive working time is not regionally determined but structurally embedded across international shipping.
- Despite limited research and evidence, fishers seem to be exhibiting even more alarming patterns, with many regularly surpassing 91 hours of work per week.

These findings confirm the persistence of hazardous working conditions for sea workers, even though they have largely disappeared from most other sectors worldwide since the end of the 19th century.

Regulatory and enforcement shortcomings

The research finds that regulators frequently overlook the links between excessive working hours, occupational safety, and seafarer fatigue.

Additionally, systemic deficiencies exacerbate the problem, including:

- Maritime exception: The regulatory choices of EU Member States align with international standards (MLC, 2006 and C188) rather than with decent work principles.
- Inconsistent enforcement: Research reveals widespread falsification of work/rest hour records, understaffing, and persistent breaches treated as routine or unavoidable.

- Limited or absent feedback mechanisms: Violations recorded during inspections seldom reach flag States in a way that supports meaningful corrective action.

Social dialogue: imbalance and ineffectiveness

The report also examines the role of social dialogue in shaping working time regulation and practice. The main findings show:

- At the macro level, social dialogue is structurally unbalanced, thereby allowing the predominance of shipowner interests. Additionally, EU negotiators rarely challenge international maritime standards, even when they contradict the established norms of decent working time applicable in other sectors in their own countries.
- At the micro-level, shipboard case studies document repeated failures in implementing safe working time, with crew members reporting structural non-compliance, lack of corrective action, and retaliation when raising concerns.
- Fishing social dialogue is fragmented, with weak representation and poor uptake of health and safety standards.

Notably, the current terms of social dialogue seem unable to address the root causes of excessive working time and redress the situation. In short, the gap between sea and land labour standards is abyssal, indicating a need for re-evaluating EU maritime governance, including its foundations and cognitive matrix.

Remarks

Taken together, the results point to a persistent tendency to prioritise sectoral interests over occupational safety and health.

First, maritime regulations normalised ‘the unacceptable’ in terms of working time. Consequently, overwork is the norm for sea workers, inactivating the applicability of decent working time at sea. Far from progressive, EU maritime regulation remains anchored in outdated standards that are dangerous to ships and sea workers.

Second, compliance monitoring and enforcement mechanisms are inefficient at ensuring the implementation of even the existing, poor standards.

Third, the structural imbalance between employers and employees in the maritime domain is detrimental to a fair social dialogue. Therefore, no effective corrective mechanism is currently available to support decent work at sea.

List of Acronyms

C188	Work in Fishing Convention, 2007
CBA	Collective Bargaining Agreement
CER	Community of European Railways
EASA	European Union Aviation Safety Agency
ECA	European Cockpit Association
EC	European Commission
EEA	European Economic Area
EEC	European Economic Community
EMSA	European Maritime Safety Agency
ERA	European Regions Airline Association
ETF	European Transport Workers' Federation
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
FDP	Flight Duty Period
FTL	Flight Time Limitations
GAE	Government Accountability Office
ICAO	International Civil Aviation Organization
ILO	International Labour Organization
IMO	International Maritime Organization
ITF	International Transport Workers' Federation
ITF-FRN	International Transport Workers' Federation's Fishers Rights Network
JTWG	Joint ILO-IMO Tripartite Working Group
MLC	Maritime Labour Convention

OECD	Organisation for Economic Co-operation and Development
SARPs	Standards and Recommended Practices
SDG	Sustainable Development Goal
STC	Special Tripartite Committee
STCMLC	Special Tripartite Committee established under the Maritime Labour Convention (MLC), 2006
STCW	Standards of Training, Certification and Watchkeeping for Seafarers
WGB list	White, Grey and Black list by Paris MoU
WMU	World Maritime University
WOCL	Window of Circadian Low

1 Introduction

Following an examination of the regulatory gap on working time between maritime workers and other groups, the report discusses selected aspects of social dialogue.

The focus on working time is justified by the fact that this aspect of work is at the inception of the development of labour law at international and European levels. Additionally, working time remains a core issue in transportation because it is directly associated with human factors, occupational safety and health, and well-being.

Evidence from international and EU regulations suggests that working time examinations clearly expose the treatment gap between seafarers and other workers. Indeed, existing research demonstrates chronic fatigue in shipping and a certain normalisation of unhealthy and unsafe working time standards and practices at sea.

Furthermore, a 2025 industry report suggested a '[…] strong link between long working hours and the risk of heart attack, which perhaps explains the high number of cardiac-related deaths in our records and also the increased risk we see among watchkeeping officers.' [1]

Although studies on working time at sea are not new, research is now beginning to enter maritime policy debates. For example, in April 2025, several proposals led by the seafarers' group were submitted to the Special Tripartite Committee (STC) of the MLC, 2006, requesting, *inter alia*, that the seafarers' working time limits be modified to align maximum working time standards and minimum rest periods. It was proposed to increase the rest period for seafarers from 77 to 96 hours workweek, and to limit working time to 72 hours (Proposal No. 6 on hours of work and rest). Additionally, Proposal No. 7 on exceptions to hours of work and rest requested compensatory leave or shorter voyages for watchkeeping seafarers and seafarers working onboard ships on short voyages. In the face of opposition from shipowners and certain flag States, both proposals were rejected. However, the STC agreed to convene a Joint ILO-IMO Tripartite Working Group (JTWG)[126] to identify and address Seafarers' Issues and the Human Element on hours of work and hours of rest, including to review the relevant provisions of the MLC, 2006, and the STCW Convention and consider the development of practical guidance (STCMLC/2025/Resolution) [2].

However, comparing sea workers' working time standards and practices with those of other mobile and land workers remains unexplored. The study fulfils this gap by focusing on the European maritime context while incorporating a comparative global perspective.

Moreover, the study also explores social dialogue in the maritime sector, assessing its perceived quality among flag States and its practice.

[126] The JTWG only had the mandate to issue recommendations and determine the value of developing practical guidance, but not to develop guidance itself.

2 Working time case study

From the Industrial Revolution onwards, 24/7 activities spread, prompting the first working time regulations to protect workers from the detrimental consequences of overwork and to avoid production disruptions. Historically significant, working time regulations remain an essential foundation of national and international labour law. While working time for shore-based workers incorporated occupational safety, health, and well-being considerations at an early stage, working time at sea remains fixed at levels that disappeared from other sectors by the mid-19th century [3].

Safeguarding the health and safety of workers and allowing working people to reconcile their private and professional lives is crucial to the interests of workers, industries, societies, and economies [4].

The ILO Declaration on Fundamental Principles and Rights at Work (1988) was amended in 2025 to include a safe and healthy working environment '[…] in all occupations and all kinds of workplaces across the world.' [5]

Article 31 on fair and just working conditions of the Charter of Fundamental Rights of the European Union[127] states 'the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.' These requirements are intended to guarantee a healthy work environment.

Labour regulations typically aim to protect workers' physical and mental well-being from adverse working conditions. Limiting working time and granting rest periods safeguard workers' safety and health, while also enhancing well-being by providing recreation and opportunities for social and family life.

When establishing working time limits, it is essential to recognise workers' physiological and cognitive limits. In short, working time limits are indispensable to provide workers with 'humane conditions of labour' (ILO preamble) [3].

Research provides a rich literature on working time and health and safety. In summary, exposure to long working hours (established by health studies over 50 hours per week) has been identified:

- '[…] as the occupational risk factor with the **largest number of attributable deaths** […]' [6],
- '[…] causing **large attributable burdens of ischemic heart disease and stroke**' [1,7], and
- '[…] associated with **increased risk of incidents.**' [8]

After the official launch of the qualitative concept of 'decent work' by the former ILO Director-General Juan Somavía in 1999, the ILO debated the objectives and quantitative criteria defining what constitutes decent work. In the 2008 ILO report on measurement of decent work [9], and reiterated in successive reports [10,11], the ILO asserted that exposure to excessive hours of work (established by ILO in >48 hours per week) '[…] is a **threat to physical and mental health**, [and] **interfere with the balance between work and family life**, […].' [9]

[127] Charter of Fundamental Rights of the European Union, art. 31, OJ [2012] C 326/391.

Following, the ILO defined long working hours as over 48 hours per week and very long working hours as over 60 hours per week.

The 8-hour workday reference system

The very first ILO Convention (1919) established a reference system based on an 8-hour workday and a 48-hour workweek. This 106-year-old yardstick has been confirmed as '[…] the legal standard closest to the point beyond which regular work becomes unhealthy, which is identified in the health literature as 50 hours.' [12] Additionally, the 8-hour workday better supports work-life balance, as workers have claimed since the 19th century. The core idea was a fair division of the 24-hour day into three distinct parts: 8 hours of work, 8 hours of rest, and 8 hours of leisure (i.e., family and well-being).[128]

Conforming to the core principle of labour law development, the protection of workers' bodies and minds, this initial convention remains valid and widely implemented.

While that standard is recognised for all workers, the maritime industry has not, in practice, adopted the 'normal standard' 8-hour workday and 48-hour workday for individuals working on board ships. [13] Indeed, adducing reasons such as the special or international nature of work at sea has been advanced to develop distinctive working time regulations [14] and to frame maritime labour law at international, national and European levels [3].

Facilitated by the establishment of a specific maritime machinery at the ILO (1920-21), maritime labour law evolved in quasi-isolation. The institutionalisation of separate maritime governance (ILO maritime machinery and IMO) has progressively normalised downgraded rights for sea workers, as clearly exemplified by distinct working time limits [15].

The distinction between sea and land-based workers also exists in the EU Legislation. The 2019 Oslo University study on seafarers' employment terms and conditions concluded that: 'The law of the EU Maritime Space differs from that of the European Working Space in general. […] the current state of the law is at odds with the fundamental legal values espoused by the Treaties and the key European policy on the establishment of a European Social Pillar' [16].

Distinguishing sea workers from other workers suggests a significant breach in the spirit of labour law because the maritime labour law develops to satisfy sectoral interests, not the fulfilment of 'humane conditions of labour' or decent work at sea.

Notion of decent work and decent working time

The concept of 'decent work' emerged in 1999 and has since driven the ILO's work. This concept is rooted in the Universal Declaration of Human Rights, particularly in Article 23, which guarantees the right to work and free choice of employment, but also guarantees rights in work, this is 'just and

[128] Not guaranteeing that time division is associated with 'unsociable working hours', which refers to shifts or work periods that fall outside the traditional 9 a.m. to 5 p.m. weekday schedule, including late evenings, early mornings, nights, weekends, and public holidays. Working unsociable hours makes it harder to maintain a social life and connections with friends and family [26].

favourable working conditions', and includes protection against unemployment, equal pay for equal work and decent working time. Further, Sustainable Development Goal 8 (SDG 8) explicitly emphasises decent work by including the term in its title.[129]

When reporting on decent work, the ILO determined decent working time as 'avoiding excessively long hours and promoting rest and recovery' and set the 48-hour workweek as a threshold (in 2008). Above this limit, workers are considered to be working excessive hours, which may have short- and long-term consequences for their health and safety, work-life balance, and well-being [10].

Given that seafarers and fishers are subject to standard human physiological needs, decent working time at sea should adhere to the current ILO thresholds. However, existing ILO and IMO regulations imply the possible transgression of decent working time at sea.

European law on working time

The EU addresses working time through the EU's Working Time Directive 2003/88/EC.[130] Generic in principle, the directive also sets out specific provisions for certain categories of workers (i.e., mobile workers, offshore workers, and workers on board seagoing fishing vessels).

Non-maritime transport workers - road, rail, and air - are governed by sector-specific directives when classified as mobile workers (i.e., do not have a fixed workplace or provide cross-border services).

For fishers, the directive excluded them from Articles 3, 4, 5, 6, and 8 and introduced Article 21, which contains specific standards for daily and weekly work and rest periods. Later, the Council Directive (EU) 2017/159 of 19 December 2016 was enacted to implement the Agreement concerning the implementation of the Work in Fishing Convention, 2007, of the International Labour Organisation (ILO Convention No. 188, C188).

Seafarers are directly excluded from Directive 2003/88/EC. The justification is straightforward because Directive 1999/63/EC, later amended by Directive 2009/13/EC, apply to them.

The following sections examine whether the available data on sea workers indicate the same working time standards for maintaining a safe and healthy work environment and enjoying a work-life balance as other workers.

[129] SDG 8 - Decent Work and Economic Growth.

[130] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ [2003] L 299/9.

3 Working time trends in Europe and in the world

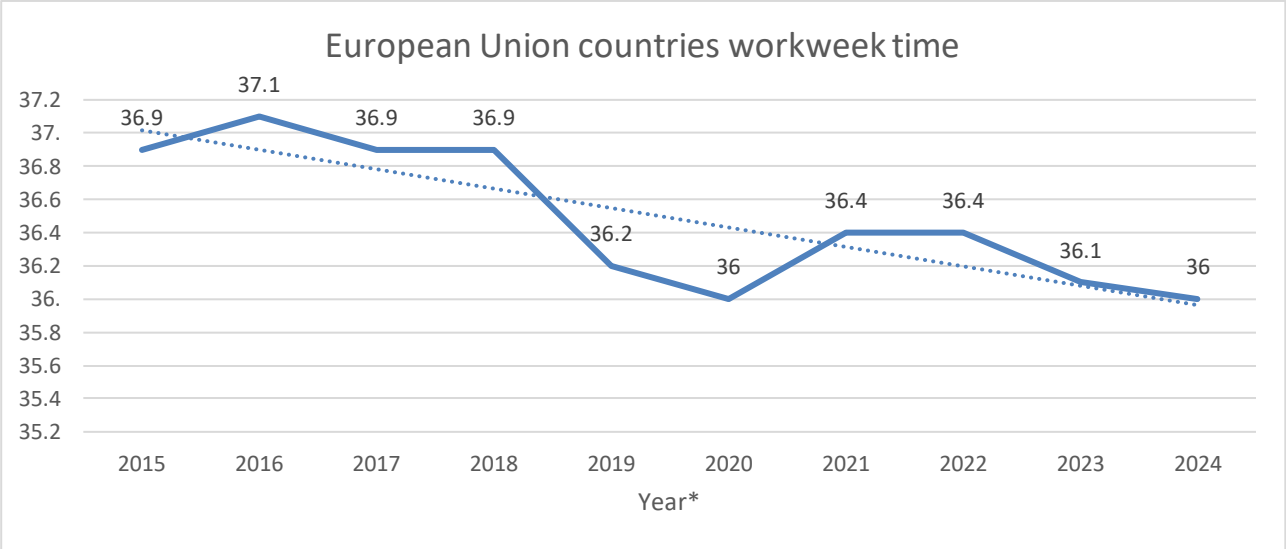
To compare seafarers' working time with that of EU workers, the actual working time measurement has been selected because it enables a comparative analysis. Indeed, this measurement includes paid and unpaid overtime, BUT excludes holidays, sick leave, breaks, and commuting time.[131]

Eurostat's 2024 data on actual hours of work show that, although there are variations across EU/EEA countries (e.g., from 32.1 hours in the Netherlands to 39.8 hours in Greece), the average workweek in Europe is 36 hours, significantly lower than the ILO threshold of 48 hours.

In terms of actual working time, 52.5% of EU workers work fewer than 40 hours weekly, and 37.3% work between 40.0 and 44.5 hours weekly. Only 10.1 % of EU workers actually work 45 hours.

Figure 1 illustrates the progressive reduction in EU working time from 2015 to 2024, but the range remains narrow from 37.1 hours per week (2016) to 36 hours per week (2020 and 2024).

Figure 1. Average workweek time in Europe (Source data: Eurostat)



*27 EU countries from 2020, after the United Kingdom's withdrawal from the EU.

Worldwide, the same trend in reduced working time is observed. Based on 2019 (or the latest year available) survey data from 160 countries that represent 95 per cent of total global employment, the ILO shows that the worldwide average hours of work per week were 43.9.[132]

[131] Eurostat. Explanation of actual and usual hours. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Actual_and_usual_hours_of_work

[132] https://ilostat.ilo.org/topics/working-time/

Data up to 2024 indicate that average weekly working hours worldwide stand at 39.3 (or 40.3 when they are excluded).[133] This recent dataset confirms a trend of reduced workweek.[134] Nonetheless, long hours of work have not disappeared, as over one-third of all workers (35.4%) regularly work more than 48 hours per week. In the EU, the percentage of workers exposed to long hours is significantly lower (around 8.1%) [11].

Additionally, certain countries exhibit specific tendencies. For example, data from 2003 to 2023 estimates a stable average of 38 to 39 hours of work per week for US workers. However, the number of US workers who work long/very long hours (>40 hours) decreases significantly [17]. On the other hand, the case of EU countries illustrates the regional choice to reduce the number of workers exposed to unhealthy long working hours.

3.1 EU Working time regulations: a normality and exceptions

The EU directive 2003/88/EC provides the bulk of regulation on working time for EU workers. Directive 2003/88/EC systematises the provisions of Directive 93/104/EC,[135] as amended by Directive 2000/34/EC.[136]

In EU countries, the directive is legally binding; however, each Member State domesticates and modifies the regulation to meet national social partners. Nevertheless, regardless of the labour activity, the regulation constitutes a strict minimum, ensuring a basic level of protection for workers.

The EU's Working Time Directive (2003/88/EC) requires the Member States to guarantee the following rights for all workers:

Weekly working hours limits	Average working hours, including overtime, not exceeding **48 hours per 7-day period**
Maximum work period without a break	Maximum of 6 consecutive work hours without a break
A minimum daily consecutive rest period	Minimum of **11 consecutive hours** of rest per 24-hour period
A minimum period off	Minimum of **24 uninterrupted hours** per 7-day period

[133] When EU countries are excluded, the worldwide weekly work hours average increases, because the working time standards in Europe are lower than in other countries.

[134] The average is calculated based on available data, which does not correspond with 2024 data in all cases, but on 2024 or the latest year available (2012-2024) of 177 countries.

[135] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, OJ [1993] L 307/18.

[136] Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive, OJ [2000] L 195/41.

Paid annual leave	Minimum 4 weeks per year
Extra protection in case of night work	Average working hours **not exceeding 8 hours** per 24-hour period, not performing heavy or dangerous work for longer than 8 hours per 24-hour period Right to free health assessments and, under certain circumstances, to transfer to day work

The EU's Working Time Directive (2003/88/EC) protects the working time of all workers in Europe but also sets specific regulations for certain categories of workers, including mobile workers (such as those in sea, road, rail, and aviation) and inland waterway workers.

3.1.1 Seafarers' exclusion from normal working time regulation in Europe

From the first maritime session of the International Labour Conference (1920) to 1996, the ILO failed to regulate working time at sea on an 8-hour basis, leaving the shipping and fishing sectors without international working time standards for 76 years.

Pushed by a series of marine casualties, the IMO adopted the 'fatigue mitigation' regulation in 1995, introducing the concept of minimum daily rest hours.

Some notable features characterised the first working time standards implemented in the maritime sector:

- The 1995 STCW amendments focused on watchkeepers, ignoring other categories of workers.
- The 1995 amendments introduced the reference system of 'a minimum of 10 hours of rest in any 24-hour period', meaning the possibility to work 14 hours per day without any weekly limitation.
- Finally, the amendments allowed reducing daily rest to 6 hours for 2 days, meaning the possibility of working 18 hours per day.

Reacting to the IMO fatigue mitigation framework, the ILO integrated the minimum rest period system and, in 1996, adopted the Seafarers' Hours of Work and the Manning of Ships Convention (No. 180). The final text of the Convention indicated the intention that 'the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays […].' BUT the insertion of maximum hours of work (14 hours) and minimum hours of rest (10 hours) standards directly invalidated it.

With the introduction of the minimum rest periods of 10 hours per day and 77 hours per week, the ILO normalises the principle of a 14-hour workday at sea. Later, Regulation 2.3 of the MLC, 2006 and Article 14 of the Work in Fishing Convention (No 188) absorbed the 14-hour work principle, significantly deviating from the ILO working time 'normality standard,' as outlined in 1919.

The enactment of international standards penetrated regional (EU) and national laws. Consequently, the exclusion of seafarers from the 2003 EU Working Time Directive, as well as its limited application to fishers (except for annual leave), exposes maritime workers to regulations that downgrade their labour rights compared to other workers.

Currently, seafarers' working time is regulated by Directive 1999/63/EC of 21 June 1999 (amended in 2009 by the Council Directive 2019/13/EC), integrating elements from the STCW 78 amendments of 1995 and the 1996 ILO Seafarers' Hours of Work and the Manning of Ships Convention (No. 180). The directive enacted the possibility of a 14-hour workday and a maximum of 91 hours per week (when using the minimum hours of rest limits) for seafarers.

Without questioning the significance of such regulations for occupational health and safety and well-being, the European Union adopted international standards, opening the possibility for EU seafarers or vessels flying the EU flag to work 98 hours or 91-hour workweeks. Consequently, EU law confirmed and supported the downgrading of sea workers working time standards to align them with international maritime labour law.

Consequently, in terms of working time standards, EU-flagged ships do not differ from open registries or flags of convenience.[137]

3.1.2 Fishers closing the gap with seafarers in Europe

Considering that no international agreement was adopted in the fishing sector on working time, the EU's Working Time Directive (2003/88/EC) addresses fishers' working time in the dedicated derogatory Article 21. The text explicitly excludes fishers from the normal standards applicable to other workers, such as daily and weekly rest, breaks, maximum weekly working periods, and night work (Articles 3-6 and 8). Interestingly, Article 21 includes provisions on the maximum hours of work (14 hours) or the minimum hours of rest (10 hours), which mimic the ILO Convention 180 applicable to seafarers, aligning both categories of maritime workers.

Anticipating the entry into force of the ILO Work in Fishing Convention (No. 188) in November 2017, the EU enacted the Council Directive (EU) 2017/159[138] in December 2016.

Interestingly, Article 11 of the Council Directive (EU) 2017/159 retained the working time provisions of Regulation 2003/88/EC (based on C180 standards), avoiding a downgrade of fishers' standards as the C188 standards are lower than the C180 standards.

Therefore, in the case of fishers' working time standards, the EU did not completely incorporate the ILO C188 standards (which only focus on minimum hours of rest but disregard hours of work), and preferred keeping the 2003 EU Standards inspired by seafarers' international standards (which include both minimum hours of rest or maximum hours of work). The alignment of seafarers' and fishers' working time standards equalises both sea workers' standards, meaning that the EU can improve the minimum stated in the international convention.

Strikingly, the EU directive 2003/88/EC explicitly recognises the imperative need of 'adequate rest […] which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular

[137] Report 2 'Ensuring decent working time for the future–Seafarers under EEA and non-EEA flag' examined how the flag States have developed and justified national working time requirements for seafarers across the EEA and several selected non-EEA countries.

[138] OJ [2017] L 25/12.

working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term' (Article 2 paragraph 9) but does not find any contradiction when enacting Article 21 (the maximum hours of work (14 hours) or the minimum hours of rest (10 hours)). This suggests confusion about the meaning of rest itself, which is often wrongly equated with sleep, while disregarding other human needs such as time for personal care (e.g., food, hygiene) and 'genuine free time.'

Finally, EU fishers' working time standards appear better than international standards but remain well below those applied to most other occupations, with the exception of shipping and inland waterways.

3.1.3 The normal working time regulation and transport workers' exclusion in Europe

Specific provisions of the 2003/88/EC do not apply to mobile workers and offshore work[139] (Article 20). Mobile workers are described in the Directive as 'any worker employed as a Member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway.'

Markedly, the Directive explicitly distinguishes fishers from mobile workers (or offshore workers). Contrary to fishers, mobile and offshore workers are covered by the core protection allowed to all workers (Article 6) on maximum weekly working time, which states that 'the average working time for each seven-day period, including overtime, does not exceed 48 hours.'

Like seafarers, separate directives establish working time standards for other mobile workers: the Aviation Directive 2000/79/EC for air mobile workers, the Road Transport Directive (2002/15/EC) and Regulation (EC) No 561/2006 for road transport workers and the Rail Directive (2005/47/EC) for rail workers.

None of these directives blankly downgrades working time standards contained in the EU Directive 2003/88/EC. These directives integrate specific features to accommodate operational needs without jeopardising workers' safety and health.

Another category of mobile workers, those in inland waterway transport, is covered by the EU Directive 2014/112/EU. Their working time standards are broadly comparable to those applicable to seafarers and fishers. As a result, workers in waterborne transport are subject to less favourable conditions than other mobile workers.

[139] For offshore workers, no more references are made to this category of workers because they are not in the scope of the study.

3.2 Working time regulations and implementation: A comparative analysis between transport operations[140] in Europe

The methodology compares regulations and research (i.e., relevant literature and available data) to determine whether working time is considered and implemented for sea workers on par with other EU workers.

Several tables have been created to facilitate the identification of provisions and comparative analysis.

Table 1 identifies the working time regulations applicable in the EU for transportation modes (i.e., air, road, rail, and sea).[141] [142]

Following the identification of the regulations, **Table 2** compares relevant components available in the texts, such as maximum daily and weekly work hours, breaks, minimum daily and weekly rest periods, annual leave, and protection for night workers.[143]

The analysis of **Tables 1** and **2** is presented in **Sections 3.2.1** and **3.2.2**.

Following this, the research examines the potential impact of the regulatory framework on fatigue, providing a set of specific criteria. **Table 3** in **Section 3.2.3** assesses the existing provisions against a list of 8 fatigue management criteria compiled by Jones et al. (2005) [18]. The requirements include the time of day, circadian rhythms, duration of sleep opportunity, sleep quality, predictability, sleep debt, time on task, and short breaks.[144] The analysis was limited to these factors because others such as workload balance with staffing or workplace stressors are absent from regulations and would require experimental research for proper evaluation.

In **Section 3.3**, the research analyses the implementation of working time regulations in relation to the decent work time concept and the statistical indicator, i.e., the percentage of workers in excessive working time in the European space [9].

[140] Transport operations refer to commercial operations at sea, in the air, on the road and on railways.

[141] Despite not being a transportation mode, fishing is included in the analysis.

[142] Regulations applying to the EU can originate from international institutions as well as regional specialised agencies.

[143] Reference periods and derogations are excluded from the analysis because these elements individualise working systems in a level of subtilities complexifying the comparison without affecting the conclusion.

[144] The requirements are associated with work schedules, night activity and inadequate sleep, as the major causes of fatigue identified in transport operations [36].

3.2.1 Identification of applicable regulations (Table 1)

Table 1. Laws regulating working hours and EU directives for transportation modes and fishing

Regulatory body	Shipping	Fishing	Aviation	Road	Rail	Inland waterway
International Regulations						
International Maritime Organization (IMO)	STCW 1978, as amended, Regulation A-VIII/1					
International Labour Organization (ILO)	MLC, 2006, as amended, Regulation 2.3	Work in Fishing Convention (No. 188), Article 14		Hours of Work and Rest Periods (Road Transport) Convention, 1979, No. 153 (C153)		R008 – Hours of Work (Inland Navigation) Recommendation, 1920 (No. 8)
International Civil Aviation Organization (ICAO)			Chicago Convention, 1944, Annex VI: Standards and Recommended Practices (SARPs) – Part I on flight time, duty time, and rest requirements			
EU Directives						
EU-General Working Time Directive (2003/88/EC)	Not applicable	Applicable except for Articles (3-6, 8) and include a specific provision in Article 21	Applicable except for Articles (3, 4, 5, 8)	Applicable except for Articles (3, 4, 5, 8) of	Applicable except for Articles (3, 4, 5, 8)	Applicable except for Articles (3, 4, 5, 8)
EU-Sectoral Directives	Directive 2009/13/EC – on the	Directive 2017/159 – on the	Regulation (EU) No 83/2014 – General	Regulation (EC) No 561/2006 on the	Directive 2005/47/EC – on	Directive 2014/112/EU – on

Regulatory body	Shipping	Fishing	Aviation	Road	Rail	Inland waterway
	implementation of the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC	implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation	refers to Flight Time Limitations (FTL) Directive 2000/79/EC – working time of flying crew	harmonisation of certain social legislation relating to road transport (consolidated version) – Driving time Directive 2002/15/EC – Working time (driving time + other tasks)	working conditions of mobile workers engaged in interoperable cross-border services in the railway sector	certain aspects of the organisation of working time in inland waterway transport
European Union Agencies						
European Union Aviation Safety Agency (EASA)*			FTL as contained in Regulation (EU) No 83/2014 – flying time Only addresses flight mode			

*The EASA regulates working time, while the European Maritime Safety Agency (EMSA) does not.

Railways are the only transport mode not subject to unified international work and rest hours regulations. However, the EU Directive 2003/88/EC includes provisions for rail drivers engaged in interoperable cross-border services. These provisions cover certain aspects of their working conditions in accordance with the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF).

For inland waterways, no international legally binding instrument on working time exists; the only relevant ILO instrument is Recommendation R008 on Hours of Work (1920), which is non-binding. In this context, the EU adopted Directive 2014/112/EU, implementing the European Agreement on the organisation of working time in inland waterway transport, thereby establishing a sector-specific working-time regime within the Union.

The Road Transport Convention, 1979 (No. 153), governs working and driving time for commercial drivers in countries that have ratified it, including EU Member States. However, Regulation (EC) No 561/2006 (consolidated version)[145] on the harmonisation of certain social legislation relating to road transport, later amended by Regulation (EU) 2020/1054, and the Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities regulate together the driving times, breaks, rest periods and working time of road drivers in Europe.

In aviation, the international framework governing flight and working time is the Chicago Convention of 1944. These standards are implemented in Europe through the Directive 2000/79/EC concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) and the Regulation (EU) No 83/2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.

As indicated previously, EU regulations on shipping and fishing are directly inspired by international regulations and adapted to regional settings, and, except for fishing (i.e., where the EU chose not to fully incorporate ILO C188 but instead aligned fishers' working-time norms with those of seafarers), do not raise international standards.

Finally, the contrast between the European Union Aviation Safety Agency (EASA) and the European Maritime Safety Agency (EMSA) is clear in terms of working hour oversight. Unlike EMSA, the EASA provides clear, detailed regulations for air workers through FTL.

[145] The consolidated text of the Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, includes the amendments made by Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs.

3.2.2 Comparative analysis of applicable regulations by sector (Table 2)

Table 2 summarizes and compares the working time criteria outlined in the regulations listed in**Table 1**.

The selected criteria for the analysis are:

- Maximum daily and weekly work hours,
- Breaks,
- Minimum daily and weekly rest periods,
- Annual leave, and
- Protection for night workers.

The purpose is to compare objective and straightforward features.

Table 2. Criteria for assessing working time regulations in the EU

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
Maximum daily work[146]	**What is the daily working hour limit?**	Not specified directly. However, it can be inferred that the absolute maximum working time is at most 13 hours per day. Art. 3 requires at least 11 hours of continuous rest per day.	14 hours in any 24-hour period.	14 hours in any 24-hour period.	Different Flight Duty Periods (FDPs) for crew members. Absolute base maximum of 13 hours (for standard crew of 2 pilots), but reduced based on the number of sectors and start time, and a maximum of 16 hours combining flight duty and standby periods at the airport (EASA FTL).	The daily driving time shall not exceed nine hours (C153). However, the daily driving time may be extended to at most 10 hours, not more than twice during the week (Regulation (EC) No 561/2006).	Not exceeding nine hours for a day shift.	14 Hours in any 24-hour period (reduced to 12 hours during the season). Note: Season refers to 'the period of no more than 9 consecutive months during a 12-month period.'

[146] Equivalent to maximum hours of work (daily), which is one of the two legal framework indicators for measurement of decent working time proposed by ILO (2008) [37].

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
Daily rest	**What is the minimum daily rest period?**	11 consecutive hours per 24-hour period.	10 hours in any 24-hour period, divided into no more than 2 periods, one of which will be at least 6 hours.	Article 3[147] is not applicable. 10 hours in any 24-hour period, divided into no more than 2 periods, one of which will be at least 6 hours.	Pre-flight home-based rest of minimum 12 hours. Away from home-based rest period of minimum 10 hours, including an 8-hour sleep opportunity in addition to time for travelling and physiological needs.	At least 11 hours per 24 hours (at least 10 hours in C153). Alternatively, two uninterrupted periods of at least 3 hours, the first, and at least 9 hours, the second period.	12 consecutive hours per 24-hour period (may be reduced to a minimum of nine hours once every seven-day period).	10 hours in each 24-hour period, of which at least six hours are uninterrupted.
Breaks	**What are the rest breaks?**	Rest break (duration not specified) when the working day is longer than 6 hours (Article 4).	Not specified.	Article 4[148] is not applicable. Not specified.	Not specified. Only specified the conditions for extending the basic maximum daily FDP due to a break on the	An uninterrupted break of not less than 45 minutes, after a driving period of four and a half hours.	Breaks of 30 minutes (for working time between 6-8 h) and 45 minutes (for working time >8 h).	Rest break (duration not specified) when the working day exceeds 6 hours.

[147] Directive 2003/88/EC

[148] Directive 2003/88/EC

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
					ground (EASA FTL).	Not more than 6 consecutive hours of work (not just driving but other working time, including administrative work) without a break. Breaks of at least 30 minutes (for working time between 6-9 h) and at least 45 minutes (for working time >9 h).		
Weekly rest period	**What is the minimum weekly rest period?**	Uninterrupted 24 hours per each seven-day period	One day of rest per week.	Article 5[149] is not applicable. Weekly rest unspecified. Contrary to MLC, 2006	Minimum of 7 days free of all duty per calendar month, and 96 days free	Weekly rest period at least once per two consecutive weeks.	Uninterrupted weekly rest period of 24 hours.	Weekly rest unspecified. No more than 31 days may be worked consecutively,

[149] Directive 2003/88/EC.

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
				provisions, C188 does not include reference to 'normal working hours' standard […] based on an eight-hour day with one day of rest per week and rest on public holidays.'	of all duty per calendar year. At least 36 consecutive hours free from duty every 7 days (EASA FTL & ICAO).			leading to 2 rest days after 10 consecutive working days, 5 rest days after 20 consecutive working days and 9,4 rest days after 31 consecutive working days).
Maximum weekly working time[150]	**What is the maximum weekly working time?**	Average working time not exceed 48 hours for each 7-day period, including overtime.	72- or 91-hours, including overtime in any 7-day period.	Article 6[151] is not applicable. 72- or 91-hours, including overtime in any 7-day period.	Max 100 hours flying in any 28 consecutive days, 900 hours flying per 1 year and 1000 hours in any 12 consecutive months. Max. 60 duty hours (from reporting to	Driving time not exceed 56 hours, and the total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.	Max. 80 hours driving over a two-week period.	84 hours in any seven-day period (reduced to 72 hours during the season). Maximum 2304 yearly work hours in 12 months.

[150] Equivalent to maximum hours of work (weekly), which is one of the two legal framework indicators for measurement of working time proposed by ILO (2008) [37].

[151] Directive 2003/88/EC.

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
					release) in any 7 consecutive days; 110 duty hours in any 14 consecutive days; and 190 duty hours in any 28 consecutive days.	Average working time not exceed 48 hours for each 7-day period (may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded).		
Annual leave[152]	**What is the minimum period of paid annual leave?**	At least four weeks, not replaceable by allowance in lieu, except where the employment relationship is terminated.	A minimum of 2,5 calendar days per month of employment and pro rata for incomplete months, except where the employment relationship is terminated.	At least four weeks, not replaceable by allowance in lieu, except where the employment relationship is terminated.	At least four weeks of paid annual leave.	At least four weeks, not replaceable by allowance in lieu, except where the employment relationship is terminated.	Annual period of paid holiday (not specified).	At least four weeks, not replaceable by allowance in lieu, except where the employment relationship is terminated.

[152] Equivalent to paid annual leave, which is one of the two legal framework indicators for measurement of working time proposed by ILO (2008) [37].

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
Length of night work	**What are the maximum hours of work for night workers?**	Not exceed an average of eight hours in any 24-hour period.	Not provision for maximum hours of work.	Article 8[153] is not applicable. Not provision for maximum hours of work.	Not specified. No restrictions on consecutive night operations, but a reduction in FDP (from reporting to release) to 11 hours.	Directive 2003/88/EC, but if night work is performed, not exceed ten hours of daily working time per 24-hour period.	Not exceeding eight hours for a night shift between two daily rest periods.	Not exceeding seven hours daily, and 42 hours per seven-day period.
Health assessment for night workers	**Are free health assessments mandatory for night workers?**	Yes, before the assignment and at regular intervals.	Yes, at regular intervals, for all seafarers, not only night workers.	Yes, before the assignment and at regular intervals.	Yes, before employees are assigned, and then at regular intervals, for all.	Directive 2003/88/EC applies.	Directive 2003/88/EC applies.	Yes, annual health assessment free of charge, for all seafarers, not only night workers.
Transfer of night workers to day work	**Are night workers with health issues transferred to day work?**	Yes.	Yes, but only watchkeepers.	Yes.	Yes.	Directive 2003/88/EC applies.	Directive 2003/88/EC applies.	Yes.

[153] Directive 2003/88/EC.

Criteria	Question	Directive 2003/88/EC	Sea-shipping	Sea-Fishing	Air	Road	Rail	Inland Waterways
Safety and health protection for night workers	**Do night workers and shift workers have safety and health protection appropriate to the nature of their work?**	Yes, Member State to take the necessary measures.	No specific provisions either for night or shift workers.	Yes, Member State to take the necessary measures.	Yes.	Directive 2003/88/EC applies.	Directive 2003/88/EC applies.	Yes.

Daily and weekly work hours and breaks

While the regular daily working time is 8 hours, transportation modes permit, under specific circumstances and subject to recovery periods, extended maximum working hours to manage peak operational demands.

- In aviation, under EASA FTL, a maximum of 13 flight hours is possible (when two pilots are operating). When airport standby is included, the maximum permissible time may extend up to 16 hours.
- Shipping and fishing establish a 14-hour workday. Inland waterways also set a 14-hour workday, but this is reduced to 12 hours during the operating season (period of no more than 9 consecutive months in 12 months) for passenger vessels.
- For road and rail, the maximum driving time is 9 hours, the only sectors that are strictly below the absolute maximum authorised working time of 13 hours per day for non-transport workers.

Article 6 of Directive 2003/88/EC sets the principles for workers that 'the average working time for each seven-day period, including overtime, does not exceed 48 hours.' In the transport sector, the approach to implementing maximum weekly limits varies.

- The EU Road regulations, despite extending the weekly driving limit to 56 hours and the working time to 60 hours, do not allow driving for two consecutive weeks, totalling more than 90 hours or exceeding the average of 48 hours of work over four months. Rail also limits driving to a maximum of 80 hours over two weeks. In short, the accumulation of driving time exceeding 48 hours is prevented by setting time-based overtime limitations.
- Aviation also extends the average of 48 weekly hours to a maximum of 60 duty hours (from reporting to release) in any seven consecutive days. However, to avoid accumulation of working time, the sector sets a maximum of 110 duty hours in any 14 consecutive days; and 190 duty hours in any 28 consecutive days. Moreover, the number of flying hours is limited to 100 hours in any 28 consecutive days, 900 hours per year, and 1000 hours in any 12 consecutive months.
- In inland waterways, working time may reach up to 84 hours within any 7 days, provided that the average weekly working time does not exceed 48 hours over a 12-month reference period and the annual total does not surpass 2,304 hours.[154]

On the contrary, EU shipping and fishing sector regulations theoretically exceed the average 48-hour weekly hours, allowing up to 91 hours.

- Unlike other transport modes, EU shipping and fishing regulations do not prevent the accumulation of overtime. Without restrictions on accumulated hours over weeks or months

[154] As shown later in Section 3.3, reaching the maximum annual total of 2,304 hours in inland waterways amounts to less work than completing seven months in the shipping sector (estimated at 2,529 hours).

and given that the MLC, 2006, implicitly allows up to 11 consecutive months at sea (exceeded in situations like the COVID-19 crisis), a seafarer can work up to 91 hours per week throughout the contract period.

Breaks during work time are covered, with varying details, by all EU regulations on working time, except for those related to shipping and fishing. At sea, regulations on working time, whether international or regional, do not specify the need for and the duration of short breaks after a certain number of work hours.

Minimum daily and weekly rest periods

Article 5 of the Directive 2003/88/EC states that 'a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest' for all workers.

- Rail drivers are entitled to 12 consecutive hours of rest, as are aeroplane crews, prior to flight.
- Regulations for road drivers adhere to the 11-hour daily limit. If this period is interrupted, as for rail workers, a minimum of nine consecutive hours of rest must be ensured.

Notably, EU road regulations strengthen certain international standards. While C153 requires 'at least ten consecutive hours' of daily rest during any 24-hour period starting from the beginning of the working day,' Regulation (EC) No 561/2006 increases this requirement to 'at least 11 hours.' Moreover, EU road regulations also determine the length of breaks and the division of driving and working time for a common application across Europe.

By contrast, sea workers benefit from lower rest standards, with a minimum daily rest period of 10 hours, which may be split, provided that one uninterrupted period of at least 6 hours is included. Inland waterway workers are subject to the same rest requirements.

A regular weekly rest period is one full day off. The day off within a period of seven days, as specified in Directive 2003/88/EC, is also mandated in EU rail and shipping regulations and extended to at least 1.5 days in the air.

A regular weekly day off is not guaranteed in inland waterway transport. Instead, the Directive establishes a rest-day accrual system (i.e., workers accumulate fractional rest days for each working day) to prevent more than 31 consecutive work days and to ensure that at least two full rest days are taken after 10 consecutive working days. By contrast, road transport requires a weekly rest period at least every two consecutive weeks, a protection not provided at all in the fishing Directive.

Annual leave

The differences in annual leave provisions across sectors are minimal. Annual leave is treated similarly across sectors, with a duration of around 30 days (4 weeks) per year, except for rail, where the duration is not specified.

The cases of short-term employment are no exception, being paid annual leave granted in proportion to the duration of the contract. However, because employment might finish just upon repatriation, the rest period can be compensated by payment upon termination of employment. This has a particular impact on shipping and fishing due to the common practice of job temporality.

It is important to highlight that annual leave is a matter of public order to the extent that rest periods are crucial to accident prevention and health protection. This is why neither the employer nor the employee can waive it.

Night work

Night time working hours are regulated across all EU transport sectors, including inland waterways. Sea workers, however, are exempt from specific limits on maximum night hours (i.e., no nightwork cap). The exception is for sea workers under the age of 18, for whom night work is prohibited.

Similarly, other aspects of night work, such as access to free health assessments, are addressed across all EU working time regulations, except for shipping. Shipping regulations do not explicitly provide dedicated health protection measures for night workers or transfers to day duties when health problems arise (except for watchkeepers).

3.2.3 Comparison of outcomes between legal frameworks for modes of transport in the EU (Table 3)

The following section examines the capacity of the legal frameworks for each transport mode to integrate and respond to fatigue risks. In order to do so, analytical criteria inspired by the scientific literature are deployed (listed in **Table 3**).

Time of day

The time-of-day criterion concerns whether the working-time regulations address night work. Indeed, working at night significantly increases the risk of worker fatigue by disrupting the body's natural sleep-wake cycle (circadian rhythm). To protect operations and operators, day work is always preferable, as people working at night are not at their peak performance. For this reason, night work requires specific safeguards; most importantly, limits on its duration.

The EU directive 2003/88/EC recognises the hazardous and stressful nature of night work. Consequently, the regulatory response is to limit the number of hours performed at night, especially when facing 'special hazards or heavy physical or mental strain.' The Directive states that night work '[…] do not exceed an average of eight hours in any 24-hour period' (Article 8); and Articles 9 to 12 detail safety and health provisions for night workers.

Transportation is characterised by 24/7 operations, which entail frequent night shifts. Except for rail, road and inland waterways, night work receives limited consideration in other sectoral directives.

- For rail, the Directive 2005/47/EC covers the criterion sufficiently by limiting night-time driving to 'eight hours for a night shift between two daily rest periods' (Clause 7).
- For road, the Directive 2002/15/EC identifies the human body's sensitivities to night work and the dangers of prolonged night work. Therefore, the Directive limits the daily working hours of night workers to 'cannot exceed 10 hours of work within a 24-hour period' (Article 7).
- For inland waterway workers, Directive 2014/112/EU limits night work to a maximum of 7 hours per night and no more than 42 hours of night work within any seven-day period.
- Directive 2000/79/EC for aviation does not address the time-of-day criterion. The EASA FTL regulation, although do not impose any restriction on consecutive night operations, proposes broader principles that empower companies to 'allocate duty patterns which avoid practices that cause a serious disruption of an established sleep/work pattern, such as alternating day/night duties,' then helping to limit consecutive (i.e., two) night shifts (based on Annex 6 recommendations from ICAO) and allow recovery opportunities.

- For shipping, although night work is mentioned, Directive 2009/63/EC does not limit night working time. While the IMO does not address night work, the ILO prohibits it for young workers under 18.
- Articles 8 and 21 of Directive 2003/88/EC exclude fishers from night work provisions, while Directive 2017/159 prohibits night work solely for fishers under 18.

Circadian rhythms

The circadian rhythms criterion refers to the consideration of the body's variations in 24-hour rhythms (sleep-wake cycles) within the particular work environment. The importance of addressing this factor lies in the impact of these daily body variations on the worker's performance and safety, especially for shift workers. The body can adapt, but only gradually by approximately ±2 hours per day.

Despite transport work relying on shift workers, working time regulations seem to ignore circadian adaptation. In effect, regulations disregard provisions that align work/rest scheduling with workers' biological sleep-wake cycles.

- The EASA FTL regulation is the only one taking into consideration the 'window of circadian low (WOCL),' meaning the period between 02:00 and 05:59 hours in the time zone to which a crew member is acclimatised by establishing specific working-time limitations during this period. The regulation requires that the maximum daily Flight Duty Period be calculated on the basis of the crew member's acclimatisation to the local time zone when duty is performed within the WOCL.

Duration of opportunity for sleep (sleep duration)

Sleep is the only effective remedy for fatigue. According to scientific assessments, adults require 7-9 hours of sleep per day. The IMO Guideline on Fatigue (MSC.1/Circ1598) recommends 8 hours and includes other parameters, such as quality and continuity, to allow restorative sleep. Consequently, the criterion of opportunity for sleep requires a minimum daily off-duty time greater than eight hours. In this criterion, not only the number of available hours (sleep duration) is considered, but also their continuity, i.e., how consistent and uninterrupted the sleep may be.

In principle, all applicable EU regulations take this factor into account by accommodating more than 8 hours of daily rest. Indeed, 'rest' should not be understood *stricto sensu* as sleep alone; it also includes other off-duty activities. According to Rutenfranz et al. (1976)**,** time devoted to personal needs (physiological, psychological, spiritual, etc.) may amount to approximately 2.25 hours per day [19].

The Directive 2003/88/EC addresses sleep duration by proposing a minimum of 11 hours of daily rest in 24 hours for workers in Article 3, thereby accommodating not only sleep but also time for other non-work-related activities.

As shown in Table 2, most EU sectoral directives prescribe a minimum daily rest of more than 8 hours.

- Shipping and fishing require a minimum of 10 hours per 24-hour period.
- In inland waterways, workers are likewise entitled to at least 10 hours of rest every 24 hours.
- Eleven hours are required in road transport.

- Rail workers have a 12-hour minimum rest.
- For aviation, while the Directive 2000/79/EC does not addressed this criterion, EASA FTL establishes a mandatory pre-flight rest of minimum of 12 hours (upgrading the 10 hours minimum requested by ICAO, Annex 6) when the rest period is home base and at least 10 hours when the rest period is away from home base, and including 'an 8-hour sleep opportunity in addition to the time for travelling and physiological needs.'

However, differences exist among the transport modes' regulations concerning whether these minimum rest periods are consecutive. To secure 8 hours of uninterrupted sleep while accommodating other daily living activities (ADLs),[155] longer periods are needed.

- For road and rail, even when rest is reduced to less than 11 and 12 hours, respectively, a minimum of 9 hours of uninterrupted service must be guaranteed.
- Shipping, fishing and inland waterways allow the rest period to be divided into no more than 2 periods, with at least 1 period of at least 6 hours. Consequently, fragmentation does not guarantee the opportunity for continuous (i.e., non-fragmented) sleep of at least eight consecutive hours and reduces ADL.

Sleep quality

This criterion would complement the previous one, as sleep needs to be uninterrupted to be effective for fatigue. Thus, it is not enough to guarantee a minimum number of sleep hours at work; scientific evidence also emphasizes that sleep must be high-quality and uninterrupted (i.e., not broken up by awakenings).[156] Consequently, this criterion relates to the work environment and facilities assigned for sleep.[157]

In many cases, transport workers do not sleep at home; therefore, certain sleeping conditions require greater attention. Notably, most working time regulations do not address sleep quality when working away from home.

- The EASA FTL considers the possibility of an uninterrupted rest period when it is not home-based. The work system must ensure a minimum of 10 hours of rest, including 'an 8-hour sleep opportunity in addition to the time for travelling and physiological needs' within that

[155] Activities of daily living (ADLs) include essential tasks for maintaining hygiene and health, including washing, dressing, feeding, toileting, mobility and transferring.

[156] While the 'opportunity for sleep' criterion refers to sleep duration, including opportunity for consecutive hours, the 'sleep quality' pertains to uninterrupted/fragmented sleep triggered by any factor other than the availability of hours to sleep (e.g., room conditions, comfort, noise, etc.).

[157] The 'sleep quality' criterion does not consider the existence of medical causes that may impact sleep and the safety of operations. When considered, it is addressed by regulations governing professional competences, as is the case for road transport under Directive 2006/126/EC on driving licences for people with obstructive sleep apnoea.

period. Additionally, EASA FTL also considers the type of in-flight rest facilities and their standards for augmented crews, depending on the flight duration.

- For rail, the Directive 2005/47/EC stresses sleep quality by proposing a sufficient level of comfort in the accommodation (although the standards are not specified), as well as by compensating for a daily rest away from home with a daily rest at home (Clause 4).
- On the other hand, the MLC, 2006, as amended, stipulates that suitable accommodation and measures to mitigate factors that can disrupt sleep, such as noise and light, must be addressed. Seafarers (and fishers) spend more time away from home than any other transport worker, so this aspect acquires utmost relevance. The other regulations do not address this issue.
- Neither the road nor the inland waterway Directives include measures to safeguard sleep quality when workers are away from home.

Predictability

The criterion predictability assesses the adequacy of the information provided to plan sleep periods. An inability to regulate predictability in the work environment may increase fatigue risk by preventing workers from recovering or anticipating rest periods. This criterion is important to ensure sufficient time every day for the safety of operations and workers.

- Aviation Directive 2000/79/EC (Clause 9) and EASA FTL request to notify flight crew in advance (ORO.FTL.225 & ORO.FTL.110).
- The Road Transport Directive includes a requirement to release driving schedules in advance (Article 16.2), as well as requirements for other work and breaks.
- For shipping, MLC, 2006 require ‘posting, in an easily accessible place, of a table with the shipboard working arrangements’ (Standard A2.3 paragraph 10). This document does not reflect the reality of the work but rather an arrangement because, unlike other transportation modes, the ship’s organisational structure frequently transforms to adapt operations. Therefore, this shipboard poster cannot be considered a predictive tool but rather a legal requirement. In practice, companies and research institutes provide software to support planning, but they usually fail to capture the extreme variability of individual activities in ship operation.
- Predictability is not addressed in fishing, inland waterways or rail, as these sectors have no requirements for work start times or scheduling.

Sleep debt

Sleep debt, or sleep deficit, is the cumulative effect of not getting enough sleep. The sleep debt criterion concerns the provision of an extended off-duty period to compensate for the sleep deficit. Because insufficient sleep has cumulative effects, extended recovery sleep is required to offset the deficit and avoid fatigue. For example, in the United States, the road transport sector requires a

minimum of 34 consecutive hours per week to ensure at least two 10-hour rest periods.[158] Such provisions are deemed to prevent fatigue by addressing the cumulative impact of insufficient sleep over time.

Article 5 of Directive 2003/88/EC stipulates one day off per week. Allowing only one 10-hour rest period is considered insufficient to address sleep debt.

- The aviation Directive potentially fulfils the sleep debt criterion by providing, respectively, 7 days off per month and 96 days off per year for flight crews (Clause 19), provided they are appropriately distributed. In this respect, the EASA FTL (in alignment with ICAO, Annex 6) specifies the existence of minimum recurrent extended recovery rest periods of 36 hours every 7 days, including two local nights, increased to 2 local days twice a month, and up to 168 hours (7 days) between two recurrent extended recovery rest periods to compensate for cumulative fatigue.
- Similarly, the rail sector potentially meets the criterion by allowing 104 rest periods of 24 hours yearly, including 12 double rest periods of 48 consecutive hours every two weeks (thereby, more than 34 hours), for rail workers (Clause 6).
- Regulation 561/2006 for road transport ensures recovery from accumulated fatigue by mandating a minimum of 45-hour regular weekly rest (Article 6). Over any two consecutive weeks, this may take the form of either two regular weekly rests or one regular and one reduced rest of at least 24 hours, provided that the reduction is made up with an equivalent uninterrupted rest before the close of the third week (Article 8(6)).
- The EU Directive for shipping (Clause 4), which provides only one day of rest per week (not mandatory) and no additional extended rest period, does not ensure adequate recovery from accumulated sleep debt. In practice, meaningful recovery often occurs only when seafarers sign off after months at sea, by which time significant fatigue may have already developed.
- The EU Directive for inland waterways similarly fails to meet the sleep-debt recovery requirement. It does not mandate a weekly day off and allows up to 31 straight days of work. When this threshold is reached, workers must then receive a minimum compensatory rest period (e.g., 2 days after 10 workdays, 5 after 20, 9.4 after 31).
- Finally, Directive 2017/159 for the fishing sector fails to provide even the minimum weekly 24-hour rest period, worsening chronic fatigue.

Time on task

In the literature, working more than 12 hours per day exponentially increases the risks for the operation and operators. Therefore, the criterion is established on a 12-hour limit. Time on task differs from time at work because it refers to the time spent performing activities (i.e., all activities related to the task), excluding idle or waiting time and break time.

[158] Federal Register 68 (81) 22456.

The 2003/88/EC does not prescribe a daily working time limit. However, given a minimum daily rest of 11 hours, the maximum working time is 13 hours.

Except for rail, the other transportation sectors do not adequately address time-on-task.

- In the rail sector, Clause 7 sets the maximum day shift at 9 hours (a maximum of 80 work hours in 2 weeks), which falls below the 12-hour criterion.
- The Road Transport Convention (Article 6) limits maximum daily driving to nine hours. Regulation (EC) No 561/2006, Article 6, sets the same daily limit but allows an extension to 10 hours on no more than two days per week. The overall limit on total working time (driving, other work, and periods of availability) is established by Directive 2002/15/EC, which complements Regulation 561/2006. This Directive does not set a fixed daily maximum working time. Instead, it imposes a weekly limit of 48 hours, which may be increased to 60 hours provided that the 48-hour average is maintained over the reference period. Mirroring the rail provisions, the limit remains above the 12-hour threshold.
- Clause 18 of the sectoral Directive for aviation, limiting yearly flying to 900 hours, is insufficient because it allows for risky peaks, as evidenced by the maximum 13 hours in flight mode.
- The regulatory framework for seafarers and fishers authorises daily working hours exceeding the 12-hour benchmark, allowing up to 14-day work hours and 91 hours per week. In parallel, the Inland Waterways Transport Directive also permits 14-hour working days, with a weekly limit of 84 hours.

Short breaks

The final criterion concerns short breaks, which are intended to interrupt continuous work, sustain performance, and reduce fatigue, hence their importance in evaluating fatigue-management provisions.

Under Directive 2003/88/EC, short breaks are addressed through the requirement for a break after six hours of work (Article 4).

- The International Road Convention requires breaks after periods of continuous driving or continuous work, but does not specify their duration. However, Article 5 of Directive 2002/15/EC establishes short breaks after 6 consecutive hours of work: at least 30 minutes for working periods of 6-9 hours, and 45 minutes for periods exceeding 9 hours. In addition, Article 7 of Regulation (EC) No 561/2006 requires a 45-minute break after 4.5 hours of continuous driving.
- Clause 5 of the rail sectoral Directive proposes breaks of 30 minutes after 6-8 hours of work and of 45 minutes after >8 hours.
- Paragraph 8 of the Inland Waterways Directive entitles workers whose daily working time exceeds six hours to a rest break, although the duration is not specified.
- Short breaks are insufficiently defined in EASA FTL, as only a general reference to ‘breaks on the ground’ is included, with no minimum duration specified.
- Short breaks are not addressed in the relevant regulations and directives reviewed in both shipping and fishing. Shipping regulations acknowledge short breaks only by excluding them

from hours of rest, leaving their definition and treatment to national implementation. As a result, short breaks primarily serve as a time-management tool rather than a fatigue-management mechanism. In the fishing sector, short breaks are not recognised at all.

Table 3. Fatigue-related criteria in EU working time regulations and sectoral directives

Law, regulation, legislation	Regulation/ Article	Time of day	Circadian rhythms	Duration of opportunity for sleep	Sleep quality	Predictability	Sleep debt	Time on task	Short breaks
International Regulations									
STCW, 1978, as amended (IMO)	Section A-VIII/1, A-VIII/4 and A-VIII/5	NA, but prohibits night work for seafarers below 18 years	NA	NS	NA	NS	NA	NA	NA
MLC 2006, as amended (ILO)	Regulation 2.3	NA in Reg. 2.3, but Regulation 1.1 prohibits night work for seafarers below 18 years	NA	NS	NA in Reg. 2.3, but title 3 deals with accommodations (NS)	NS	NS	NA	NA, the definition of hours of rest excludes short breaks without providing additional elements
Work in Fishing Convention, 2007 (No. 188) (ILO)	Manning and hours of rest, Article 13, 14	NA, but prohibits night work for fishers under the age of 18	NA	NS	NA	NA	NA	NA	NA
Chicago Convention, 1944 (ICAO)	Annex VI: Standards and Recommended Practices (SARPs)	S, Annex 6	-	S, Annex 6	-	-	S, Annex 6	-	-

Law, regulation, legislation	Regulation/ Article	Time of day	Circadian rhythms	Duration of opportunity for sleep	Sleep quality	Predictability	Sleep debt	Time on task	Short breaks
Road Transport Convention, 1979 (No. 153) (ILO)	Hours of Work and Rest Periods	NA	NA	NS, Article 8	NA	NS, Article 10	NA	NS, Article 8	S, Article 5 and 7
Inland Navigation, Recommendation, 1920 (No. 8) (ILO)		-	-	-	-	-	-	-	-
EU Directives									
Directive 2003/88/EC		S, Articles 8-12	NA	S, Article 3	NA	NA	NS, Article 5	NS, Article 6	S, Article 4
Directive 2009/63/EC-Shipping		NA, Clause 6 (seafarers below 18 years old), & Clause 13(14) (in relation to health issues)	NA	NS, Clause 3-5	NA	NA	NS, Clause 4	NA	NA
Directive 2017/159-Fishing		NA, Article 6 (fishers under the age of 18)	NA	NS, Article 11	NA	NA	NA	NA	NA
Directive 2000/79/EC-Aviation		NA	NA	NA	NA	S, Clause 9	S, Clause 9	NS, Clause 8	NA

Law, regulation, legislation	Regulation/ Article	Time of day	Circadian rhythms	Duration of opportunity for sleep	Sleep quality	Predictability	Sleep debt	Time on task	Short breaks
Directive 2002/15/EC-Road		S, Article 7	NA	S, Article 6	NA	S, Article 16	S, Article 6 (with reference to Regulation (EC) No 561/2006, Article 4 and 8)	S, Article 6	S, Article 5
Directive 2005/47/EC-Rail		S, Clause 7	NA	S, Clause 3	S, Clause 4	NA	S, Clause 6	S, Clause 7	S, Clause 5
Directive 2014/112/EU Inland waterways		S, Paragraph 9	NA	NS, Paragraph 7	NA	NA	NS, Paragraph 6	NA	S, Paragraph 8
European Union Agencies									
EASA FTL (Flight Time Limitations)	Regulation (EU) No 83/2014 (amending Regulation (EU) No 965/2012)	S, ORO.FTL.110	S, ORO.FTL.205	S, ORO.FTL.235 (a,b)	S, ORO.FTL.235 (b)	S, ORO.FTL.110 & S, ORO.FTL.225	S, ORO.FTL.235 (d)	NS, Article 9a	NS, ORO.FTL.220

NA-not addressed, S-sufficient, NS-Not sufficient.

- No particular measures are specified.

Seafarers and fishers are subject to the weakest fatigue protection frameworks

A comparison of international and European working-time conventions applicable in EU Member States reveals both commonalities and significant differences across sectors. Across all regimes, whether international or European, and whether applicable to transport or non-transport workers, working-time provisions remain primarily prescriptive.

None of the existing regulatory frameworks comprehensively addresses the full range of fatigue-related risk factors, suggesting that these instruments were not fully informed by the scientific evidence available at the time of their development. Among transport sectors, aviation, rail, and road address the largest number of fatigue-related criteria (six out of eight). Notably, circadian rhythms (reflecting the alignment of work schedules with human sleep-wake cycles) are not considered in any regulation except Regulation (EU) No 83/2014 for aviation (EASA FTL).

The Working Time Directive 2003, which does not apply to mobile transport workers, addresses three fatigue-related criteria: time of day, sleep duration, and short breaks. Notably, it addresses the time of day (i.e., limiting night work hours). In contrast, for mobile transport workers who frequently work at night, this requirement is covered only in the aviation (EASA FTL), rail, road, and inland waterways regulatory frameworks.

Among mobile transport workers, EU rail regulations[159] address the greatest number of fatigue-related criteria (six), supplementing the Working Time Directive with provisions on sleep quality, sleep debt, and time on task. EU rules governing road transport workers also cover six criteria, including time of day, sleep duration, predictability, sleep debt, time on task, and short breaks.

By contrast, aviation workers fall under a relatively restrictive regime in which the relevant EU Directive covers only two criteria (sleep debt and predictability), with the remaining criteria addressed primarily through the EASA FTL rules (time of day, circadian rhythms, opportunity for sleep, and sleep quality), which nonetheless omit time on task and short breaks.

EU regulations for inland waterways workers address only two of the eight fatigue-related criteria: time of day and short breaks. Although inland waterways workers differ from seafarers in terms of regulatory structure (being subject to more region-specific and less globally harmonised rules) and in their work environment (with shorter voyages and easier access to shore), their working-time realities share important similarities. Both groups face excessive working hours and substantial cumulative fatigue, whether through the possibility of working up to 84 hours in any seven-day period and 31 consecutive days in inland navigation or through prolonged periods of intensive work at sea for seafarers and fishers.

The most pronounced regulatory disparities are observed between the maritime sectors (shipping and fishing) and all other transport modes. Seafarers and fishers, whether governed by international

[159] Notably, unlike other transport modes, there are no mandatory systems in place to monitor the working, driving and rest times of train drivers and other safety-critical mobile railway workers in the EU [38].

conventions or EU directives, are subject to working-time frameworks that address few, if any, of the eight fatigue-related criteria. Comparisons across EU transport regulations clearly illustrate this gap. Moreover, because maritime work is regulated primarily through global instruments (STCW, MLC, C188), the same limitations extend beyond the EU to other jurisdictions that have ratified these instruments. This stands in contrast to other transport sectors, which display greater regional and national variation, as noted by Jones et al. (2005) [18].

Importantly, international working-time standards for seafarers establish only minimum and maximum thresholds, explicitly recognising the need to account for the risks associated with fatigue (MLC, 2006, Standard A.2.3, paragraph 4). The existence of ILO instruments does not preclude the EU or its Member States from exceeding these minimum standards. Indeed, the EU elected not to adopt the weaker working-time provisions of ILO Convention No. 188 for fishers, instead retaining the stronger protections of Directive 2003/88/EC, which were originally aligned with seafarer standards. This decision preserved stricter limits on working hours and minimum rest requirements, ensuring a higher level of protection that exceeds international minima for fishers.

However, unlike other transport modes, where sector-specific directives enhance working time standards applicable to EU workers by addressing specific safety and health criteria with a higher impact on fatigue, sleep and accident risk for transport operators, sea workers remain excluded from that regulatory reinforcement. As a result, seafarers and fishers do not benefit from the higher level of health and safety protection afforded to other transport operators in the EU.

3.2.4 EEA domestic shipping: favouring excessive work and interrupted rest

EU and EEA domestic fleets may be subject to other forms of regulations on working time.

The Ship Safety and Security Act[160] regulates the seafarers' working time in Norway.

Norway, like most EEA Member States, opts for hours of rest when determining seafarers' working time. The Section 24 'hours of rest' of the Norwegian Ship Safety and Security Act primarily focuses on ensuring adequate rest and preventing excessive working hours for seafarers. It specifies in the first paragraph the minimum rest periods required: 'The rest period shall be at least 10 hours in any period of 24 hours, and 77 hours in any period of 168 hours. The rest period may be divided into two periods, one of which shall be at least 6 hours. The interval between consecutive rest periods shall not exceed 14 hours.' Moreover, exceptions to the first paragraph may be made, reducing both the weekly rest period and the daily hours of rest [20].

As per the MLC, 2006, flexibility is allowed in countries, but subject to social dialogue. The Act's Section 23 'working hours' and Section 24 'hours of rest' have included the MLC, 2006 Standard A2.3 paragraph 3 on 'normal working hours' but integrated the STCW 78 as amended Section A-VIII paragraph 9 exemption related to reduction of rest hours (i.e., allowing, under certain conditions, reductions in rest periods).

[160] Act of 16 February 2007 No. 9 relating to ship safety and security, as amended, by Act of 20 December 2023 No. 115, which came into force on 1 January 2024.

Case Study 1

The case study (Case Study 1) exemplifies national flexibility by incorporating derogations allowed by the IMO Convention but not by the MLC, 2006, conflicting with working time standards for seafarers of '10 hours of rest in any 24-hour period, 77 hours of rest in a 7-day period and two rest periods of at least 6 hours of continuous rest of one.' Notably, this exception recalls paragraph 4 of STCW Section A-VIII/1 (1995). The regulation allowed a reduction to 6 hours of rest for up to 2 days, meaning the standard theoretically permitted 18-hour continuous workdays. However, this provision was removed during the 2010 Manila amendments.

In practice, when the MLC and the STCW Conventions are transposed into national law, often through a single regulatory instrument, that instrument must comply with the requirements of both conventions. While the STCW permits certain exemptions, such provisions are not allowed under the MLC. This restriction also extends to collective bargaining agreements under the MLC. Although collective agreements are recognised, they may provide flexibility only insofar as they continue to meet the MLC's standards. Any exemption or deviation that fails to comply with MLC requirements is therefore impermissible, even if it would be allowed under the STCW.

Case Study 1. Domestic shipping in Norway: Dispensation on rest time with working days up to 18 hours a day

Circular RSV 08-2025, Norway (Norwegian Maritime Authority, 2025).

In Norway, the Ship Safety and Security Act allows exceptions under collective bargaining agreement to the minimum rest periods (i.e., 10 hours of rest in any 24 hours, 77 hours of rest in 7 days and two rest periods of at least 6 hours of continuous rest of one) under two conditions, specified in paragraph fourth: a) a reduction of the weekly rest period to 70 hours (instead of 77) for a period of up to two consecutive weeks, and b) a division of the daily hours of rest into up to three periods (instead of two), one of which shall be at least 6 hours in length and neither of the other two periods shall be less than 1 hour in length, for up to two days per week [20].

However, a special regime grants exceptions from minimum rest time requirements in trade areas 1 and 2 pursuant to the Ship Safety and Security Act, Section 24, fifth paragraph. As contained in the Circular RSV 08-2025, the exceptions allow passenger ships with a shift system to reduce the crew's rest period from 10 hours to 6 hours (or five) in a 24-hour period (Norwegian Maritime Authority, 29.04.2025).

In the context of these exceptions, the Norwegian Engineers' Association has appealed the decision granting an exemption from the minimum rest period requirement. The appeal raises concerns about the crew's health and safety, and 'it conflicts with international regulations introduced into Norwegian law.'

Effects on occupational health and safety: Norway's Circular RSV 08-2025 allows passenger vessels in domestic trade areas to reduce crew rest to 5-6 hours in 24 hours, divided into up to three segments, enabling working days of up to 18 hours. This represents a significant deviation from internationally accepted minimum standards under STCW and MLC, posing substantial occupational health and safety risks.

Among these impacts:

- Fatigue and increased accident risks. Severely reduced and fragmented rest (<6 hours of sleep) impairs performance and leads to acute and cumulative fatigue. This greatly increases the risk of navigational errors, slower reactions, micro-sleeps, and operational failures, particularly concerning passenger vessels.

- Seafarers' health issues. Ongoing exposure to inadequate sleep is linked to cardiovascular disease, decline in mental health, metabolic disorders, burnout, and increased sickness absence. Repeated cycles of extended workdays (up to 18 hours) and reduced rest accelerate long-term health decline.
- Eroded culture of safety. The dispensation undermines fatigue management principles in international maritime conventions and creates pressure to operate with insufficient manning. It also increases the likelihood of adjusting work and rest hour records, eroding culture of safety.

Moreover, the Norwegian Engineers' Association has appealed the granting of the exception, arguing it conflicts with international maritime rules incorporated into Norwegian law. If upheld, the exemption could expose Norway to compliance challenges and legal risks in the event of accidents linked to fatigue.

3.3 Decent working time: Statistical indicators

The study also examined the implementation of working time[161] in the EU/EEA space against the ILO statistical indicators of decent working time (i.e., the percentage of workers in excessive working time in the European space).

According to the ILO, decent work statistical indicators should focus on the proportion of workers exceeding the limits. This means that it is desirable to collect data on the tail of a distribution rather than only on the average.

Consequently, the ILO considers that 'it might be preferable to measure the percentage of workers who work hours in excess of 48 rather than to collect statistics only on average hours of work that can mask the polarisation between very short and very long working hours.' (Page 8, ILO, 2008) [4]. The percentage of workers working more than 48 hours per week would represent the statistical indicator of 'employment in excessive working time' outlined in Table 4. Furthermore, the ILO considers that when measuring decent work, those working over 48 hours do not enjoy decent working time.

Table 4. Statistical indicators of decent working time

Substantive element of the Decent Work Agenda	Statistical Indicators	Legal Framework Indicators
Decent Working Time (1 + 3)*	M – Employment in Excessive Working Time (more than 48 hours per week) (S)* A – Employment by weekly hours worked (hours in standardized hour bands) (S)* A – Average annual working time per employed person (S)* A – Time-related underemployment rate (S) F – Paid annual leave (developmental work to be done by the Office; additional indicator)	L – Maximum hours of work L – Paid annual leave

Source: Discussion paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, 2008 [9].

Additionally, the ILO establishes two excessive working time thresholds:

- 'Working long hours' (>48hours/week); and

[161] It is important to recall that the data included in this section of the report represent the reality or actual hours of work performed by workers, which can be different from what the regulation prescribes.

- ‘Working very long hours’ (>60hours/week).

Using the statistical indicator ‘percentage of workers working more than 48 hours a week’, it is possible to identify the ratio of persons **working long hours**. Using the statistical indicator ‘percentage of workers working more than 60 hours a week’ allows to evaluate the ratio of those **working very long hours**.

This statistical analysis enables a comparison of working time practices in the shipping and fishing sectors with those observed among other worker groups.

3.3.1 Working time for international seafarers: The deviance

The study collected data from three main data sources.[162]

- ILO database on working time and related reports;
- Eurostat database on working time for EU and associated countries; and
- The Organisation for Economic Co-operation and Development (OECD), which contains data at an aggregate (mainly country) level for annual working hours.

Whenever relevant, additional datasets from industries and academic reports were used for comparative purposes.

Average weekly hours of work for maritime and non-maritime workers

Table 5 compares the actual hours of work by sector, allowing for comparison of seafarers, fishers, and other workers worldwide.

2023 research (henceforth referred to as the 2023 study on seafarers) estimated that seafarers work an average of 74.9 hours per week,[163] significantly more than the global average of 43 hours per week for all workers worldwide (2014-2019 data, ILO) [21].[164]

The most recent ILO data from 2024 reduced the global average to 40.3. Average work hours for US workers in 2023 have been estimated at 38.3 hours per week (decreasing slightly but remaining relatively stable since 2003, when it stood at 38.5%) [17].

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[162] ILO: https://ilostat.ilo.org/topics/working-time/

Eurostat:https://ec.europa.eu/eurostat/databrowser/view/lfsa_ewhan2__custom_16666914/bookmark/table?lang=en&bookmarkId=2bce8aa4-a165-47d3-bfae-10f507286684&c=1747060927661&page=time:2024

OECD: https://www.oecd.org/en/data/indicators/hours-worked.html

[163] The 2023 study on seafarers is the largest done on this population, with a sample surpassing the recommended size by 16.4 times.

[164] ILO available data on working hours dates back to 1956 in the textile industry. From 1995 to 2004, ILO data were made available covering all industry sectors in 44 countries. Although the quality of these data is questionable, the average weekly working hours in selected countries broadly ranged between 35 and 45 hours. Still a significant number of developing countries have longer weekly working hours, often exceeding 48 hours (e.g., Costa Rica, El Salvador, Peru, Philippines, Thailand, and Turkey) [10].

The following table compares weekly working time:

Table 5. Actual hours of work. Comparison of seafarers, fishers and other workers worldwide

ILO Statistical indicator of work hours [10]	Worldwide seafarers (2023 data) [21]	Worldwide fishers	Worldwide workers (2014-2016 data) [10]	Worldwide workers (2019 data) [11]	Worldwide workers (2024 data)[165]	US workers-GAE (2003-2023 data) [17]
Weekly Average hours [166]	74.9	NA	43.1	43.9	40.3	38-39

GAE: Government Accountability Office, NA: Not available.

It is worth noting that, to date, no comprehensive global study on fishers' working time has been conducted. Consequently, average work hours for fishers cannot be compared with the worldwide average.

Decent work indicators and seafaring

Additionally, the 2023 study on seafarers enabled an analysis of the full distribution of working hours. The dataset facilitated the breakdown of seafarer working time according to the ILO's definition of long (>48 hours per week) and very long hours (>60 hours per week).

Additionally, these statistical indicators are also available in other datasets.

Table 6 compares the long and very long hours of work across sectors, including seafarers, fishers, and other workers worldwide.

Table 6. Percentage of workers who work excessive working time (more than 48 hours per week). Comparison of seafarers, fishers and other workers worldwide

ILO categories for work hours [10]	Worldwide seafarers (2023 data) [21]	Fishers (worldwide)	Worldwide workers (2014-2016 data) [10]	Worldwide workers (2019 data) [11]	US workers-GAE (2003-2023 data)*
Long work hours (% more than 48 hours/week)	92.6%	NA	36.1%	35.4%	19% of US workers work 41 or more hours per week

[165] https://ilostat.ilo.org/topics/working-time/

[166] The average number of hours of work per week is the classical (but insufficient) statistical indicator regarding working time.

Very long work hours (% more than 60 hours/week)	79.3%	NA	12.0%	NA	6.3% of US workers work 55 or more hours a week

GAE: Government Accountability Office, NA: Not available

*The dataset provides specific limits [17].

According to the 2023 seafarers' study, 92.6% of seafarers work over 48 hours per week. This figure is far higher than the worldwide average of 35.4% for all workers, reported by the ILO in the most recent available data [11]. More significantly, while around 12% of the global workforce works more than 60 hours [10], about 80% of seafarers report working very long hours.

Moreover, an even sharper contrast emerges when compared with 2023 US data, which show that only 19% work over 40 hours and just 6.3% work over 54 hours a week [17].

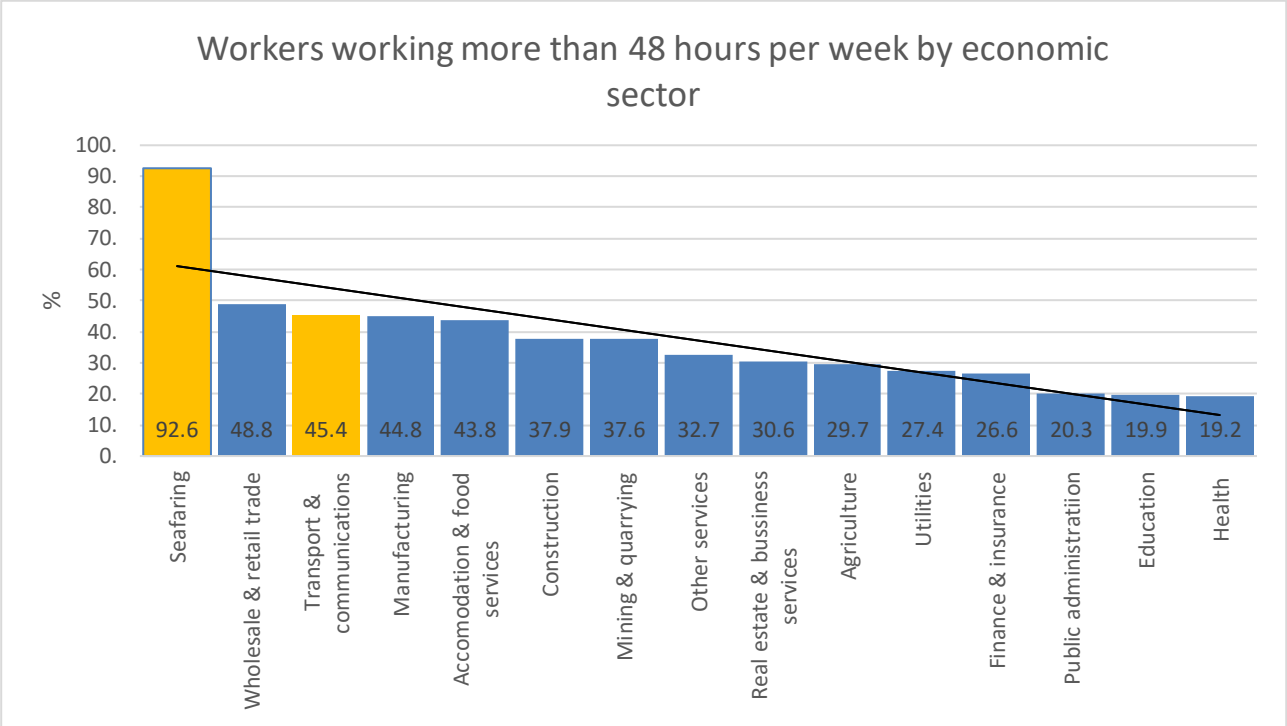
A comparative analysis using ILO decent working time indicators demonstrates that seafarers' working hours significantly exceed global labour standards, confirming findings from two decades of maritime research.

While very long hours marginally affect shore workers, they are normalised among seafarers. This normalisation, as shown in Table 6, suggests a denial of the severe consequences for ship safety and occupational health [3].

Again, it is important to recall that, to date, no comprehensive global study on fishers' working time has been conducted. Consequently, the percentage of fishers who work excessive hours cannot be compared with the global average.

Figure 2 presents a graphical comparison of the percentage of seafarers working more than 48 hours per week with that of other workers in various sectors of activity. The percentage of seafarers exposed to excessive working time is far higher than any other activity and twice that of transport & communication workers.

Figure 2. Percentage of workers who work excessive working time (more than 48 hours per week). Comparison of seafaring and other economic sectors (Source data: ILO, 2019 data [11])



While only a minority of workers in most sectors are exposed to long working hours, excessive working time is near-universal among seafarers.

Working far beyond decent work indicators and seafaring

While the ILO decent working time higher threshold has been set at 60 hours, international maritime regulations allow 72 hours under the MLC, 2006 Regulation 2.3 para. 5(a) on maximum hours of work standards OR 91 hours based on the MLC, 2006 Regulation 2.3 para. 5(b) on minimum hours of rest standards.

In short, the ILO's higher threshold for decent working time is inconsistent with the working-time limits permitted under its own regulations for seafarers.

Table 7 summarises the number of seafarers working beyond 72 hours per week and 91 hours per week. Considering that these statistical indicators do not exist, no data from other sectors is available.

Table 7. Percentage of workers who work beyond the ILO's working time indicators. Comparison of seafarers, fishers and other workers worldwide

Categories for work hours not described in the literature	Worldwide seafarers (2023 data) [21]	Thailand Fishers (2023 data) [22]	Worldwide workers (2014-2016 data) [10]	Worldwide workers (2019 data) [11]	US workers-GAE (2003-2023 data) [17]
Very, very long work hours (more than 72 hours/week)	53.3%	NA	NA	NA	NA
Beyond compliance (more than the ILO legal obligation of 91 hours per week, equivalent to 77 hours of rest)	11.7%	99.5% (not having 77 hours/week rest)	NA	NA	NA

GAE: Government Accountability Office, NA: Not available.

The table shows that more than half of seafarers work more than 72 hours per week, and more concerningly, nearly 12% exceed 91 hours per week, thereby breaching the maximum working-time limits established under the MLC, 2006. Considering that the STCW 78, as amended, permits exceptions (up to 98 hours of work or 70 hours of rest per week) under certain limits, the non-parties to the MLC, 2006 may apply such exceptions.

Given the lack of a global study on fishers' working time, evidence from a 2023 national survey conducted by the International Transport Workers' Federation's Fishers Rights Network (ITF-FRN) among more than 1,000 migrant fishers in Thailand provides important insights. The survey found that 99.5% did not obtain the minimum legal rest of 10 hours per day [22], suggesting working days of at least 14 hours. Nevertheless, the survey question combined sleep and rest, constraining direct comparison with studies that distinguish between the two. Like for seafarers, the Work in Fishing Convention, 2007 (ILO C188) Article 14 Manning and Hours of Rest para. 1(b) authorise fishers to work up to 91 hours per week. However, fishers working on vessels below 24m and those at sea for less than three days are not covered.

Additionally, at the close of this report, a newly released ILO report conducted among migrant fishers in Cambodia, Indonesia, Myanmar, and Viet Nam has concluded that fishers work an average of 14 hours per day and 6.7 days per week, amounting to approximately 94 hours per week. This new dataset reveals that fishers endure very, very long hours and do not receive the 77 hours of rest per week mandated by international standards [23].

3.3.2 Working time in the EU: The deviance is confirmed

The study collected specific data on working time for EU/EEA workers, utilising the main data sources described above, with a focus on the European region.

Average weekly hours of work for maritime and non-maritime workers in the EU/EEA

Table 8 presents a comparison of actual working hours across sectors, highlighting differences between seafarers, fishers, and other European workers. The analysis provides data on EU/EEA nationals and EU/EEA-flagged vessels and compares them with European workers.

Table 8. Actual hours of work. Comparison of seafarers, fishers and other workers in the EU

ILO categories for work hours [10]	EU (EEA) nationality seafarers (2023 data) [21]	EU (EEA) flag seafarers (2023 data) [21]	Fishers in Europe	European workers (2014-2016 data) [10]	European workers (2019 data) [11]	European workers (2023 data)[167]
Weekly Average hours[168]	76.8 (77.1)	75.7 (75.6)	NA	37.6	38.2	36.1

Note: data in brackets refer to the expanded European Economic Area (i.e., EU + Norway, Iceland and Liechtenstein).

NA: Not available.

The dataset of the 2023 study on seafarers shows that the average workweek is higher for European nationals (76.8) by around two hours per week (seafarers' global average: 74.9). The findings concern a subsample of 747 EU nationality seafarers, which is representative of the population. When EEA nationality seafarers (n = 800) were considered, the findings were very similar, i.e., an average of 77.1 weekly hours; this is consistent with the two-hour difference from the global average.

Notably, the average workweek for seafarers working on EU flags is one hour higher (75.7) than for those working on non-EU flags (74.7). This suggests that the flag does not have a significant impact on the number of hours that seafarers work.[169] The findings pertain to a subsample of 858 seafarers working under EU flags. When seafarers working in EEA flags (n=996) were considered, the findings were nearly identical: 75.6 average weekly hours vs 74.7 for non-EEA flags.

When compared with non-maritime workers, EU and EEA seafarers, as well as seafarers working for EU/EEA flags, typically work over twice as many hours on average (2023 data, Eurostat).

Decent work indicators applied to the EU/EEA

Table 9 compares the long and very long hours of work across sectors, including seafarers, fishers, and other workers worldwide. The comparative analysis provides data on EU/EEA nationals and EU/EEA-flagged vessels, comparing them with European workers. Interestingly, data on fishers has been retrieved on this particular point.

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167 https://ec.europa.eu/eurostat/databrowser/view/lfsa_ewhan2__custom_16666914/bookmark/table?lang=en&bookmarkId=2bce8aa4-a165-47d3-bfae-10f507286684&c=17470609276 61&page=time:2024

168 The average number of hours of work per week is the classical statistical indicator regarding working time.

169 Report 2, 'Ensuring decent working time for the future–Seafarers under EEA and non-EEA flags,' includes a detailed comparison of working time between various Flags categories.

Table 9. Percentage of workers who work excessive working time (more than 48 hours per week). Comparison of seafarers, fishers and other workers in the EU[170]

ILO categories for work hours [10]	EU (EEA) nationality seafarers (2023 data) [21]	EU (EEA) flags seafarers (2023 data) [21]	UK Fishers (2021-2022 data) [24]	European workers (2014-2016 data) [10]	European workers (2019 data) [11]	European workers (2023 data)*[171]
Long work hours (% more than 48 hours/week)	95.8% (95.7%)	93.5% (93.3%)	-	7.7%	11.0%	10.8% of workers work more than 44 hours per week
Very long work hours (% more than 60 hours/week)	86.3% (86.4%)	82.4% (82.4%)	93%	4.4%	NA	

Note: data in brackets refer to the expanded European Economic Area (i.e., EU + Norway, Iceland and Liechtenstein).

NA: Not available.

*The dataset provides specific limits.

Data from EU shore-based workers contrast sharply with those of sea workers. Clearly marginal for shore-based workers, excessive working time affects nearly all seafarers and fishers.

In this respect, 2023 data from Eurostat indicate that around 11% of EU/EEA workers work more than 44 hours a week. In contrast, from 95.8 to 93.3% of EU/EEA national seafarers and seafarers working in EU/EEA-flagged ships work long hours (more than 48 hours).

Strikingly, ILO data from 2018[172] indicate that fewer than 5% of European workers work very long hours (more than 60 hours per week). In contrast, from 86.4 to 82.4% of EU national seafarers and seafarers working in EU/EEA-flagged ships work more than 60 hours per week.

The percentage of EU and EEA seafarers, as well as seafarers working for EU/EEA flags, working excessive hours is 8 times higher than for EU/EEA workers in shore-based roles (2023 data, Eurostat; 2019 data, ILO).

The scarce data on fishers' working time is available from a 2022 study conducted by the University of Nottingham, which compiled data from 108 fishers working in the UK. The research indicated that

[170] Report 2, 'Ensuring decent working time for the future–Seafarers under EEA and non-EEA flags,' presents an overview of working time for seafarers and other workers. The table and section expand on this analysis.

[171] https://ec.europa.eu/eurostat/databrowser/view/lfsa_ewhan2__custom_16666914/bookmark/table?lang=en&bookmarkId=2bce8aa4-a165-47d3-bfae-10f507286684&c=1747060927661&page=time:2024

[172] Only available are the most recent figures on very long hours.

60% of the sample reported working at least 16 hours per shift, and 1/3 reported working more than 20 hours per shift. Additionally, 30% reported never receiving 10 hours of rest per day, and 85% indicated they did not obtain 77 hours of rest per week, while working more than 91 hours [9].

The data are unequivocal: seafarers and fishers are exposed to working hours and frequencies that are virtually non-existent among shore-based workers.

Working far beyond decent work indicators in the EU/EEA

Table 10 compares categories of working time beyond long work hours by sector, meaning between seafarers and fishers only. Indeed, the ILO upper criteria is 60 hours for all workers and has not yet created a 'very, very long work hours' category for maritime workers. The absence of adaptive indicators raises questions about whether maritime workers are genuinely considered within the framework of decent work.

Table 10. Percentage of workers who work beyond the ILO's working time indicators. Comparison of seafarers, fishers and other workers in the EU

Categories for work hours not described in the literature	EU (EEA) nationality seafarers (2023 data) [21]	EU (EEA) flags seafarers (2023 data) [21]	UK Fishers (2021-2022 data) [24]	European workers (2014-2016 data) [10]	European workers (2019 data) [11]	European workers (2023 data)[173]
Very, very long work hours (more than 72 hours/week)	60.8% (61.6%)	56.1% (56.3%)	NA	NA	NA	NA
Beyond compliance (more than the ILO legal obligation of 91 hours per week, equivalent to 77 hours of rest)	12.4% (12.5%)	12.3% (11.8%)	85% (not having 77 hours/week rest)	NA	NA	NA

Note: data in brackets refer to the expanded European Economic Area (i.e., EU + Norway, Iceland and Liechtenstein).

NA: Not available.

Again, the dataset from the 2023 study on seafarers shows that from 60.8% to 56.1% of EU/EEA national seafarers and those serving on EU/EEA-flagged vessels work beyond 72 hours per week.

173 https://ec.europa.eu/eurostat/databrowser/view/lfsa_ewhan2__custom_16666914/bookmark/table?lang=en&bookmarkId=2bce8aa4-a165-47d3-bfae-10f507286684&c=17470609276 61&page=time:2024

Additionally, about 12% of them work the maximum work limits set by the MLC, 2006.[174] No source, including the ILO, Eurostat, or others, provides data on the proportion of EU workers exceeding 72 hours per week, making direct comparisons impossible. In any event, that percentage would be lower than the 11% of the European workers who work more than 48 hours (Table 9).

The data also reveal a significant contrast between seafarers and fishers. While around 12% of seafarers work beyond 91 hours, 85% of fishers are reported to work more than 91 hours per week (not having 77 hours of rest per week) in the UK study by the University of Nottingham [24]. Still, this data is consistent with other qualitative studies on fisheries, which indicate that work time is unhealthy (up to 20 daily work hours) and exceeds the limits established by the ILO C188 and EU Directive 2017/159 for fishing [25,26].

Strikingly, working time practices considered unacceptable for shore workers in Europe and worldwide are normalised for maritime workers. With respect to working time, there is no distinction between EU/EEA and non-EU/EEA seafarers, as both groups work comparable hours.

3.3.3 Working time on a yearly basis: The deviance remains

Data from the 2023 study on global seafarers and from available data for all workers enabled yearly comparisons of working time.

Based on the 2023 study on working time [21], seafarers work an average of 11.5 hours.[175] Using this assumption, Table 11 simulates the annual working time load for seafarers using the estimated time seafarers spend onboard per annum.

Contractual onboard periods vary, reflecting differences in flag State, nationality, vessel type, and rank. The maritime literature consistently suggests that seafarers spend between 6 and 10 months at sea per year [28].[176]

Table 11. Simulation of seafarers' hours (actual) worked per year

Number of months spent onboard within a 12-month period	Average (estimated) hours worked in a year*
6 months (182.5 days)	2,099
7 months (212.9 days)	2,529
8 months (243.3 days)	2,798

[174] The Maritime Safety Survey conducted by the Norwegian Maritime Directorate (Sjøfartsdirektoratet), based on responses from more than 3,500 maritime workers across passenger ships, cargo ships, fishing vessels, and aquaculture vessels, shows that 20% still work more than 14 hours per day, down from 26.9% in 2023 [39].

[175] Average daily work hours instead of hours per week (74.9 average) is preferred for a more precise analysis.

[176] The 2025 sea-life balance study confirms the previous evaluation, indicating an average of 7.3 months at sea annually in a global sample of 4,290 seafarers [27].

9 months (273.8 days)	3,149
10 months (304.2 days)	3,498

*The annual hours worked were obtained by converting years to days (365 days in 2023) and then multiplying the actual number of onboard months by the average daily work hours (i.e., 11.5). For instance, during an annual onboard period of six months, a seafarer spends about 182.5 days at sea, working an average of 11.5 hours/day. This totals 2,098.75 hours, rounded to 2,099 hours per year, as shown in the table.

The arithmetic progression is unsurprising. With the same daily average, the more days you work, the larger the annual estimate.

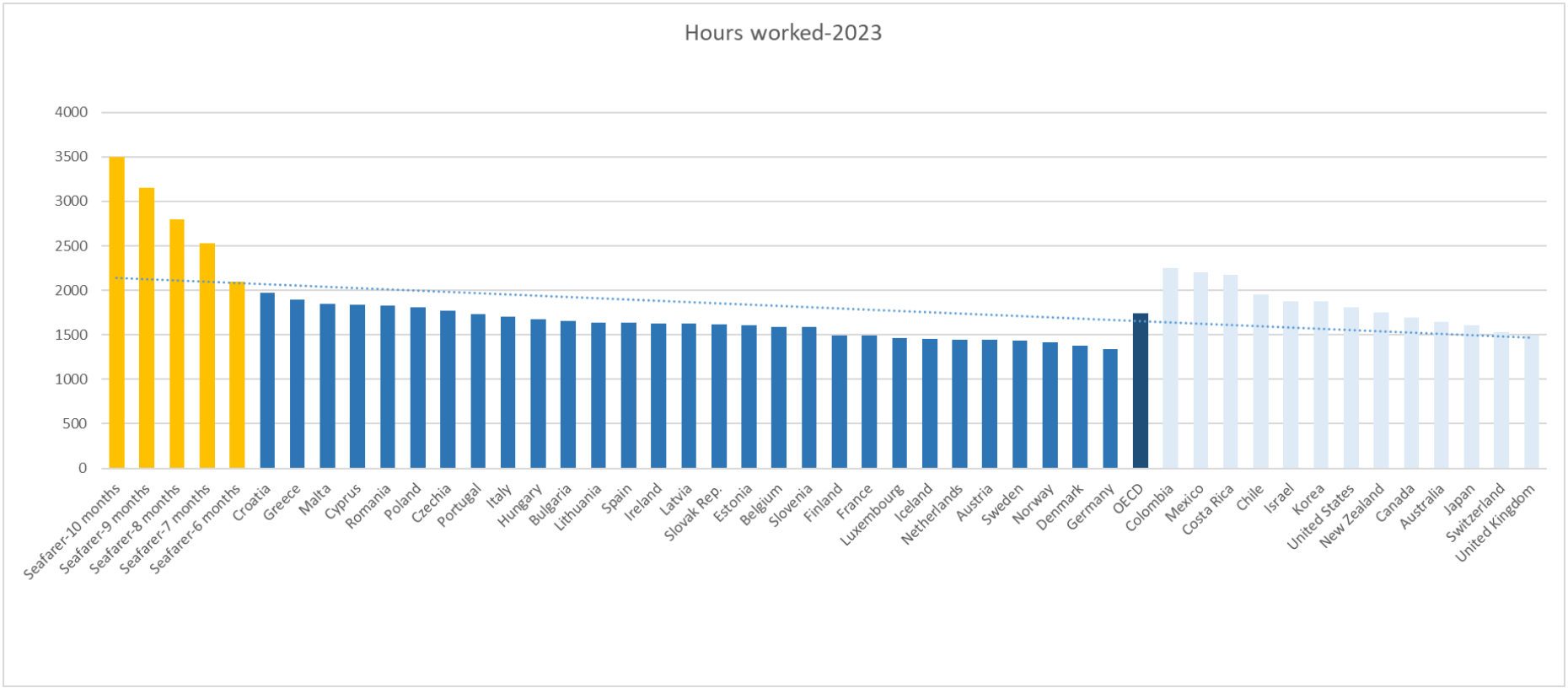
Comparing the global seafarers' annual working time with that of other workers

To perform the comparison, Figure 3 integrates two datasets:

- Seafarers' simulation data (table 11); and
- The estimated annual hours from the OECD 24 EEA countries (plus Bulgaria, Croatia, Cyprus, Malta, and Romania) and OECD countries together,[177] as reported by the 2023 OECD working-year indicator.

[177] No available data for Liechtenstein (not an OECD country). However, data for Bulgaria, Croatia, Cyprus, Malta, and Romania are available, although not OECD countries either.

Figure 3. Actual hours worked in a year (Source: 2023 data, OECD)[178]



Note: The OECD category represents the 38 OECD countries' average (i.e., the EEA countries above represented -except Bulgaria, Croatia, Cyprus, Malta, and Romania- plus Australia, Canada, Chile, Colombia, Costa Rica, Israel, Japan, Mexico, New Zealand, South Korea, Switzerland, Turkey, the UK and the USA). Data for Turkey as a separate category is not available.

[178] https://www.oecd.org/en/data/indicators/hours-worked.html

Regardless of contract length, seafarers in the 2023 study worked more hours annually than the OECD average. Additionally, each EEA country's average remains lower than the average of any seafarer, even those working 6 months a year.

Only three non-European OECD countries (Colombia, Mexico, and Costa Rica) exceed the average annual working time of seafarers employed for six months per year. Any seafarer working 7 months or more per year works more than any OECD country.

Additional datasets to focus on EEA countries and nationals

Although maritime literature consistently indicates that seafarers typically spend at least six months per year at sea [28], European seafarers may, in certain cases, spend slightly less than six months annually [29].

The 2025 WMU study 'In search of a sea-life balance in an adverse environment' [27] extracted additional data on working time concerning seafarers who are EU/EEA nationals and seafarers working aboard EU/EEA-flag vessels.

In contrast to the previous study, the 2025 dataset did not include the daily average. However, this second dataset included information on both the number of months worked on board per year and the weekly working hours. Consequently, rather than relying on a simulation, it allowed for a more precise assessment of time spent on board.

It enabled a more direct and accurate comparison of annual working hours with the 24 OECD EEA countries (plus Bulgaria, Croatia, Cyprus, Malta, and Romania) and with those of OECD countries as a whole.

Table 12 includes the analysis of four subsamples: (1) EU national seafarers; (2) EEA national seafarers; (3) Seafarers serving on EU-flagged vessels, regardless of nationality; and (4) seafarers serving on EEA-flagged vessels, regardless of nationality.

Table 12. Description of four EU/EEA datasets extracted from the 2025 study 'In search of a sea-life balance in an adverse environment' [27]

Sample description (n/%)	Average contract length	Months spent on board/year (weeks)	Average weekly work hours
EU national seafarers in the sample (n=692)[179] **Nearly 60% of the total sample sails on EU flagged ships.**	4.4	6.83 (29.60)	72.56
EEA national seafarers in the sample (n=716)[180]	4.33	6.78	72.81

[179] 28.5% are from Greece, followed by 10.7% from Germany, 8,5% from the Netherlands, 8.5% from Romania, 8.2% from Latvia, 7.1% from Poland, 5.8% from Denmark, and 4.3% from Croatia. Other EU seafarers represent lower percentages.

[180] 27.5% are from Greece, followed by 10.3% from Germany, 8.2% from the Netherlands, 8.2% from Romania, 8.2% from Latvia, 6.8% from Poland, 5.6% from Denmark, 4.2% from Croatia and 3.4% from Norway. Other EEA seafarers represent lower percentages.

59% of the total sample sails on EEA flagged ships.		(29.38)	
Seafarers working on EU-flagged ships (n=690)[181]. **Out of the 690, 409 (59.28%) are EU nationals. Other main nationalities include the Philippines (14.1%), India (7.5%) and Ukraine (6.5%).**	4.95	7.07 (30.64)	71.46
Seafarers working on EEA-flagged vessels (n=793)[182]. **Out of the 793, 426 (53.72%) are EEA nationals. Other main nationalities include the Philippines (17.4%), India (11%) and Ukraine (6.2%).**	5.04	7.10 (30.76)	71.36

After aggregating the extracted data, it becomes possible to compute the numbers and determine the yearly average for EEA seafarers with high accuracy.

Table 13. Calculation of seafarers' hours (actual) worked per year

Number of months spent onboard within a 12-month period	Average (estimated) hours worked in a year*
Seafarer-EU national (6.83 months)	2,148
Seafarer-EEA national (6.78 months)	2,139
Seafarer-EU flag (7.07 months)	2,190
Seafarer-EEA flag (7.10 months)	2,195

*The annual hours worked were obtained by multiplying the actual number of onboard months by the average weekly work hours. For example, for an annual onboard period of EU national seafarers (6.83 months), a seafarer would spend 29.60 weeks onboard. Then, if working an average of 72.56 weekly hours, it would mean an average of 2,148 yearly hours as stated in the table.

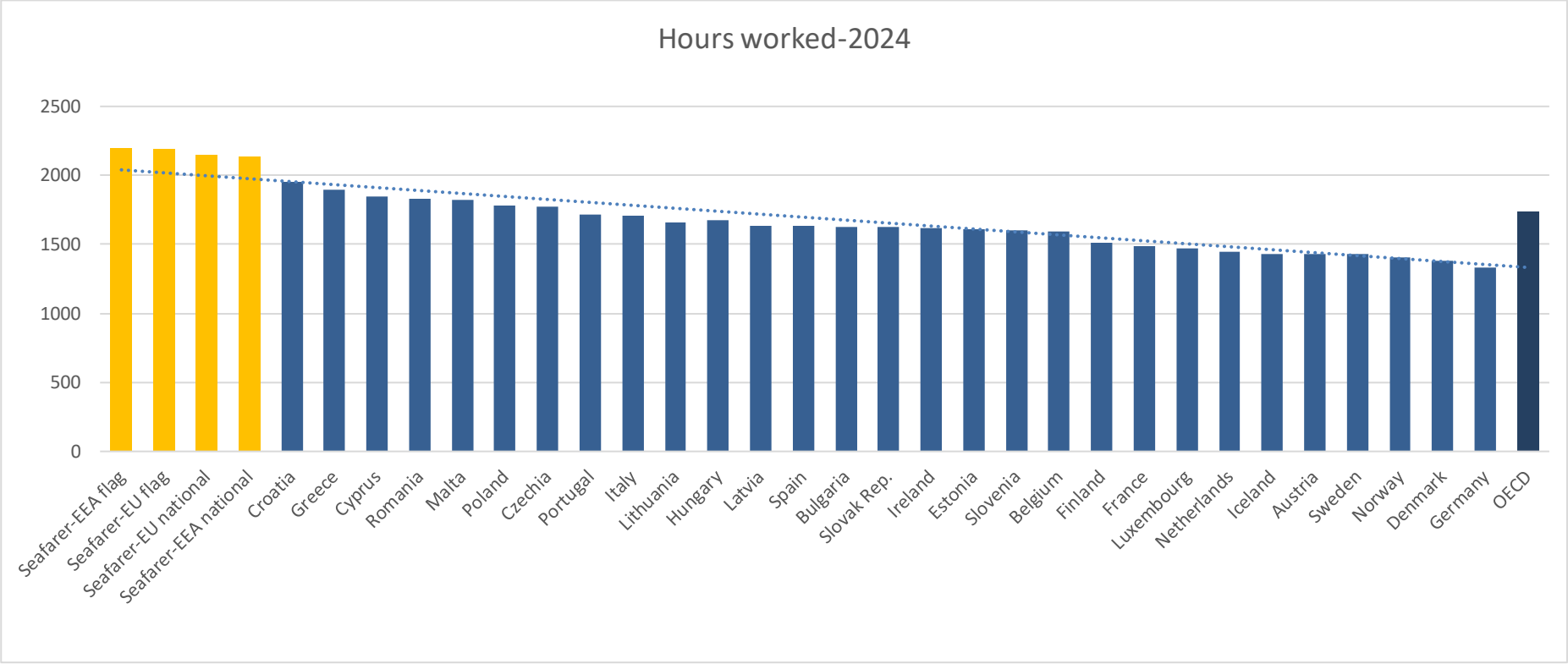
Figure 4 illustrates the comparison between the four EU/EEA subsamples and the 24 EEA countries[183] using the 2024 OECD working-year indicator.

[181] The prevalent flags are Malta (22.8%), Denmark (17.5%), Greece (15.4%), Portugal (11%), Cyprus (7.5%), the Netherlands (6.8%), and Germany (6.1%). Other EU flags represent lower percentages.

[182] The prevalent flags are Malta (19.8%), Denmark (15.3%), Greece (13.4%), Norway (12.9%), Portugal (9.6%), Cyprus (6.6%), the Netherlands (5.9%), and Germany (5.3%). Other EEA flags represent lower percentages.

[183] No available data for Liechtenstein (not an OECD country). However, data for Bulgaria, Croatia, Cyprus, Malta, and Romania are available, although not OECD countries either.

Figure 4. Actual hours worked in a year (Source: 2024 data, OECD)[184]



Note: The OECD category represents the 38 OECD countries' average (i.e., the EEA countries above represented -except Bulgaria, Croatia, Cyprus, Malta, and Romania- plus Australia, Canada, Chile, Colombia, Costa Rica, Israel, Japan, Mexico, New Zealand, South Korea, Switzerland, Turkey, the UK and the USA).

[184] https://www.oecd.org/en/data/indicators/hours-worked.html

Across the four subsamples analysed (EU/EEA nationals or EU/EEA-flagged vessels), the computation shows that annual working time on ships exceeds the average of any country.

The yearly working time average is slightly higher for seafarers serving on EU/EEA-flagged vessels than for those serving under any flag. This difference is explained by the inclusion of non-EU/EEA nationals, who tend to spend longer periods on board.

Even under the most favourable scenario, i.e., where seafarers work fewer than 7 months per year, their total annual hours reach 2,139. This surpasses the annual totals for countries like Croatia (1,955), Greece (1,898), Cyprus (1,844), Romania (1,829), and Malta (1,819), underscoring a stark disparity between maritime and shore-based labour. In practical terms, the difference in working time amounts to more than one additional month of work (calculated at a 48-hour working week) compared with Greece and nearly two additional months compared with Poland. The disparity becomes even more pronounced when compared with EEA countries that have more progressive working-time standards, such as Germany, Denmark, and Norway, resulting in more than four extra months of work at 48 hours per week.

4 Social dialogue case studies

Following the first massive industrial war, the countries created the ILO, recalling that: '[…] universal and lasting peace can be established only if it is based upon social justice.' (ILO preamble) [3] The organisation promoted social dialogue at its core and the idea of tripartism to foster negotiation rather than confrontation.

With the intention to advance decent work in the maritime industry, 'social dialogue is of the essence. […], the social dialogue mechanisms embedded in the MLC, 2006 itself still provide a way forward as long as the ILO maintains its ability to bring States, capital and labour together in order to promote decent employment in shipping. [30]

Trade unions, such as ITF, advocate for their members' rights and interests and participate in the implementation of labour standards, including those on work and rest hours. They engage with other stakeholders, empower workers to voice their concerns, and influence regulatory development, including its implementation [31].

The European Agency for Safety and Health at Work (EU-OSHA) identifies 'influence' as a decisive dimension in assessing the quality of the social dialogue on occupational safety and health matters. Influence concerns 'the relative bargaining power and ability of employee representatives to […] impact in the regulation, implementation and enforcement of OSH standards at company level' [32].

The following sections examine the 'influence' dimension of the social dialogue on working time and other matters.

In this examination, open, non-guided flag views on social dialogue are presented, followed by an analysis of case studies on working time and rest periods from the ground in EEA waters.

4.1 Social dialogue rated by flag States

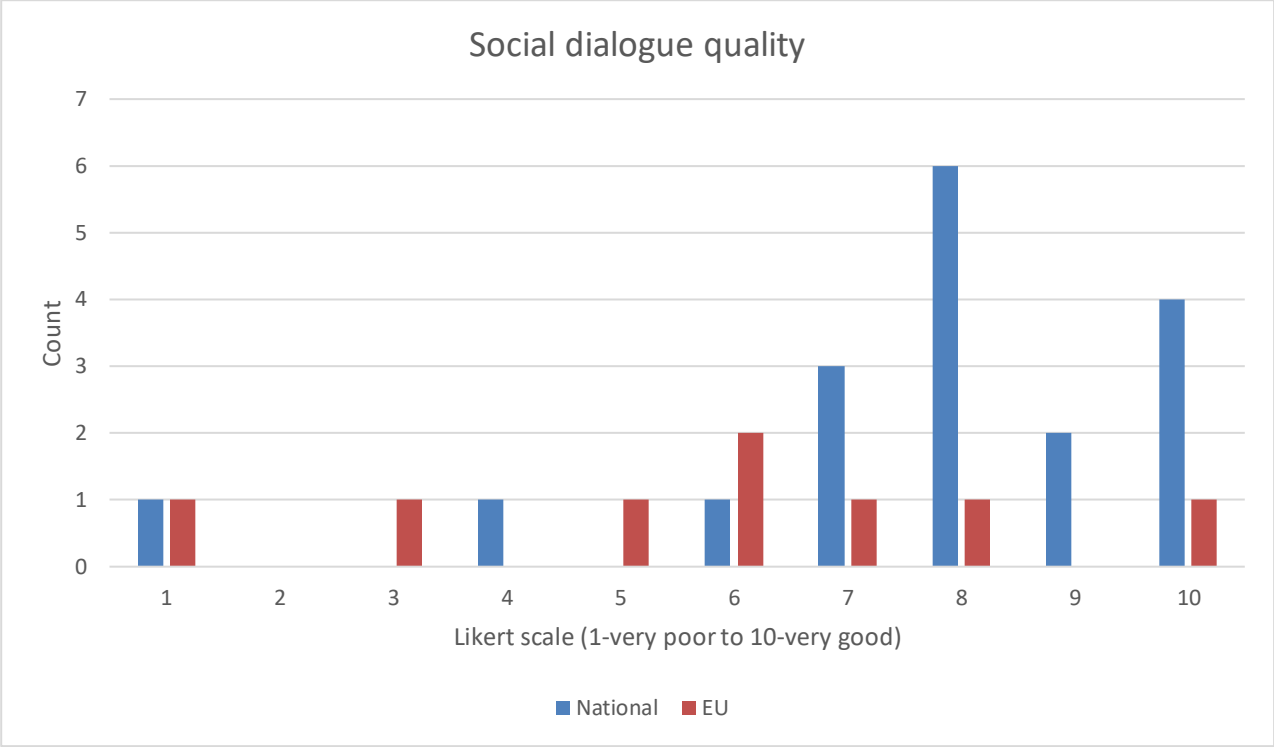
In maritime social dialogue, flag States' authorities are instrumental in supporting social dialogue between workers and employers' representatives.

A selection of flag States' Administration[185] representatives offered their views concerning the quality of social dialogue in the maritime industry. The social dialogue was rated by the representatives who responded to the question. During interviews addressing many topics, respondents answered the following question: 'On a scale from 1 (very poor) to 10 (very good), how would you rate the quality of social dialogue (listening and compromise) in the maritime sector? First, at the national level in shipping and second, at the EU level in shipping.' (Just for EU countries).

Figure 5 presents the ratings they provided, which clearly indicate that, except for a few exceptions, the quality of social dialogue is positively assessed by flag States representatives.

Figure 5. Social dialogue quality in shipping as rated by flag States*

[185] The description of the flag States representatives (n=21) who participated in the interviews is presented in Appendix A (Table A1) in Report 2 'Ensuring decent working time for the future–Seafarers under EEA and non-EEA flags.'



*The average ranking at the national level (n=18) was 7.5, and at the EU level (n=8) was 5.7.

Most flag State representatives rated the social dialogue as of good quality, suggesting a good balance between capital and labour interests. When expressing this positive view (average rate = 7.5), several considered this the best balance for labour matters.

> *They [shipowners] have ships, they need to operate ships, and we [flag State authorities] see the point of ship owners, of seafarers, and we also see the point of the Member States. But we also have to take into account that ships can only operate if they are profitable. If ships are not profitable, then there'll be no jobs for anybody, for seafarers. I think seven to eight is a fair rating to say that there is dialogue, but it's a limited dialogue […] So, there is good communication and good reconciliation, I would say. (P-5, non-EEA)*
>
> *It's an open door; anything the social partners want to discuss will be put on an agenda and discussed in a tripartite working group. There's nothing, no barriers; so, perhaps a nine […], there's nothing really tangible that I can put my finger on that would make it much better. (P-11, non-EEA)*
>
> *[…] social partners get along quite well, and they always try to find solutions rather than fighting. (P-2, EEA)*
>
> *Nothing to improve in [name of country]. It's very good. In the maritime sector, the social partners are very good at agreeing on something. […] of course, there are some issues that they don't agree on, but they will normally come to some kind of agreement. (P-9, EEA)*
>
> *This is evidence that social dialogue works: 'you have a new, updated collective agreement every year.' That means that the two social partners discuss work and agree on a very fundamental agreement, which is the collective agreement. (P-15, EEA)*

On the other hand, some representatives highlighted that more emphasis needs to be placed on implementation.

> *[…] agreements and resolution are good, but implementation is difficult because other Ministries do not well recognize maritime, so it is necessary to improve compromise after resolution. (P-12, non-EEA)*

> *First, the government cannot actually amend any rules without listening to the social partners, even without consent from the social partners. The compromise technique between social partners is not up to the standard of EU countries. Therefore, I mark eight. So the way of compromising between social partners is sometimes not wise, not data-driven. […]. Therefore, the social dialogue between social and capital still needs to improve. (P-13, non-EEA)*

The exceptions to a positive rating (below 5 out of 10) were expressed by EU flag representatives, who considered an apparent prevalence of capital interests over labour.

> *The owner association likes to earn money. So, they tell the labour organisation, okay, if you still keep [nationals], you have to accept this […], and they have to agree on what is best. And the big question was [is] to keep the [national] flag on the vessels, and the authority does not say anything.* […] *they don't listen. They don't care. […] We tried to sit together with the labour organisation and the owners organisation, to talk about working environment matters. (P-7, EEA)*

Moreover, social dialogue might neglect the health and safety of the workforce, including seafarers' time on board or working time.

> *I think it [social dialogue] is not considering the health and safety. I think it's considering money and also family. I think some seafarers, European seafarers, now, want to give enough time to their family, and so you can relate it to the health and safety, but it's more about other aspect related to the work and personal life balance. So, I don't think it's really based on the health, safety and fatigue. It's more about what workers expect in terms of life. (P-22, EEA)*[186]

The previous representative concluded with an explicit critique of the negotiation related to seafarers' health and safety.

> *[…] some standards cannot be negotiated by social partners, because they are considered too important. In my opinion, the duration of service on board should be of public order and not negotiable, because it impacts the health and safety of seafarers too much. And the same for fishers. […] social partners say, 'Oh, that issue of work hours and rest hours is a matter of IMO as well.' It is a strategy of doing nothing, because nothing would happen on that side of IMO; only the ILO can actually take the lead on this. So, at each time they say, 'Oh, we have to do a joint working group with IMO,' nothing is going to come out of it. (P-22, EEA)*

When comparing national and EU social dialogue (this rating was provided only by EU Member States' representatives), almost all respondents agreed that, at the EU level (average rate = 5.7), the dialogue is less effective than at the national level (average rate = 7.5).

> *I think it might be a little lower. We also have a limited view of what's happening at the EU level, because we don't have that many direct contacts with them. But there are some national differences. We did hear that there are some other countries that have different backgrounds or just have less protection for seafarers, which could potentially cause some issues, like social protection. (P-2, EEA)*

Only two flag States rated the fishing social dialogue, depicting a fragmented picture and highlighting unacceptable fishers' health and safety standards.

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[186] Participant 22 was interviewed after Report 2 'Ensuring decent working time for the future – Seafarers under EEA and non-EEA flags' was completed. He/she authorised the use of the interview content without any description of his/her affiliation, then 'Table A1. In-depth interviews details' does not include those details.

The same opportunities [for social dialogue] are there […]. However, the fishing representatives… it's more tenuous; it's less clear than [seafarers' union name], for example, there are people who fit into the fishing sector, but there's no one union that represents fishers as a whole. So, that means it's slightly less effective. And then also, the fishing federations are not as willing to compromise as the shipping association, for example. I think that they represent their views, as does the shipping association; however, from my experience, there's less appetite to find a consensus. (P-11, non-EEA)

Fishers are seriously behind in health and safety, and this is not acceptable. It's not acceptable that in European waters, we have such a high rate of hazards, injuries, and even deaths, and the reason is, again, health and safety regulations. Most European standards do not apply on board fishing vessels. […]. The second thing is the pay system, which is specific to fishers [and] based on the catch. (P-22, EEA)

Overall, flag State representatives are satisfied with the current social dialogue. Tripartism seems to be functioning to allow discussion; however, the power dynamics are not precisely addressed.

4.2 Elements of social dialogue related to working time

Social dialogue between social partners can be observed at the macro (shipowners' organisations vs workers' trade unions) and micro (ship vs company) levels.

The following sections intend to discuss both levels. While macro-level assessment can be based on objective regulatory outcomes and processes (e.g., working time standards), micro-level analysis requires case studies. The objectivity of such a micro-level examination depends on the quality of the case study. Additionally, case studies can only provide anecdotal evidence to illustrate the situation, but cannot claim to be exhaustive.

However, as the two faces of a coin, both the regulatory framework governing working time (the macro level) and the implementation and enforcement of shipboard standards (the micro level) exhibit a structurally imbalanced dialogue between social partners.

4.2.1 Macro-level evidence of unbalanced social dialogue

The EU's acceptance and enactment of working time standards for seafarers and fishers differ significantly from those for other workers, suggesting that EU regulators disregard the basic principle of decent working time and human factors needed for safe work.

The shipping and fishing regulatory frameworks imply that sectoral considerations prevail over the impacts of excessive working hours on individuals' cognitive, physical and behavioural capacities.

The normalisation of excessive working time suggests that:

- The EU maritime negotiators do not question maritime standards, even when they are blatantly in conflict with established working time norms for other workers.
- The isolation of maritime governance seemingly disconnected its labour standards from common labour law principles, thereby establishing maritime exceptionalism.
- The EU does not address the risk of exhausted workers in ship operations.

The gap between the maritime sector and other working environments is so vast that it calls into question the overall maritime governance and its cognitive matrix.

Certain scholars and NGOs have suggested that the shipping industry has captured the governance to regulate at its convenience [33]. Indeed, reports frequently document the disproportionate influence of industry representatives in international maritime governance.

Regarding working time, it seems that the shipowners' position, which stresses the need for flexibility, has been widely adopted by regulators. While research reports excessive working time and reduced crewing as leading causes of chronic fatigue in the maritime sector, the international and regional governance forums remain unable to address the issue effectively. Neither Directive 1999/63 nor 2017/159 seeks to improve the minimum standards enshrined in the MLC, 2006 and C188. The same applies to other Directives introduced to implement both Conventions.

The EU has proactively, and often controversially, imposed its own standards on the IMO in areas such as environmental protection and ship safety. However, the EU has displayed a passive attitude toward international maritime labour standards. The EU fails to support decent work and promote human factors. Consequently, maritime workers' rights have been abandoned to the uneven bargaining power of social partners.

Although the STCW Convention and the Maritime Labour Convention provide a legal basis for strengthening fatigue risk management 'In determining the national standards, each Member shall take account of the danger posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship (MLC, 2006, Standard A2.3 paragraph 4), this possibility has not prompted the EU to review the international standards and adopt a more efficient strategic approach.

By contrast, the review of flag State decisions on implementing working time standards for their fleets under national law[187] shows that EU countries, like others, adopt the least favourable working time for seafarers (up to a 91-hour workweek). This alignment of European regulators with industry interests overlooks core labour law principles designed to protect the weaker party in the contract, in this case, the seafarer.

By preferring to maintain the *status quo* in maritime governance, EU states neglect their commitment to 'humane conditions of labour' (ILO preamble). Consequently, maritime workers' rights and human factors science are ignored. Finally, the States' position also portrays seafarer representation as quasi-powerless.

In short, the example of working time regulation demonstrates a defective social dialogue that is unable to advance the basic interests of seafarers and fishers.

4.2.2 Micro-level evidence of defective social dialogue related to working time - case studies

The analysis focuses on a selected set of working time deficiencies or claims identified by ITF inspectors in EEA waters (Table 14). The cases were collected between May and August 2025. The research protocol was approved by the WMU's ethics committee (REC Decision #REC-25-07(R)), which ensured that all data were anonymised before analysis, including any identifiers related to the sender, as well as any companies, vessels, or individuals mentioned.

[187] Report 2 'Ensuring decent working time for the future–Seafarers under EEA and non-EEA flags' includes a review of the choices of the flag States when enacting working time standards applicable to their fleet under national law. The study examined the 30 EEA flags and the top 35 flag States identified by the United Nations Conference on Trade and Development, which account for 14.2% and 94.1% of the world's deadweight tons, respectively. Part of this analysis has been published in the European Labour Law Journal under the title 'Official defeat of seafarers' right to decent working time' [40].

Of 48 cases explored, 27 were excluded from the analysis for not being directly related to working time or for not providing follow-up details with the companies/operators. The cohort of vessels examined in the study (n=21) comprises both EEA- and non-EEA-flagged vessels operating in EU waters. The analysis included three steps: 1- the detected or reported working-time issue during an inspection; 2- the company/operator's response to the problem; and 3- the reasons cited by the companies for the breaches of the labour standard. Thematic analysis was applied to the data (i.e., the set of texts) to identify the most recurrent patterns and themes and their meanings.

Overview

The cases presented exhibit excessive working hours and insufficient rest for their crews, as well as frequent (and repetitive) violations of rest hours. During interactions with ITF inspectors, they often reported observing working time regulations breaches.

The analysis shows that a substantial number of violations involve vessels engaged in multiple simultaneous activities (such as bunkering, arrivals, and departures). It seems that the number of crew members needed to conduct such activities under commercial pressure leads to a certain disregard for crew work/rest times. As reported in the literature, seafarers prioritise smooth ship operations even when this is detrimental to the respect of working time regulations [34]. This practice is associated with reduced crew, leading to systemic rest-hour breaches.

As presented in Table 14, when violations are reported to the company, the responses are diverse but can be broken down into broad categories:[188]

- The *denial response*: rest-hour violations are denied, or a big surprise.
- The *push-back response*: full responsibility for violations is placed on the crew. The crew is blamed for its inability to manage the ship, including poor planning or errors in reporting.
- The *learning and recording response*: recognising that violations are entirely the responsibility of deficient crew capacity, companies propose better training for crew members to plan and train accordingly, or installing on-board software solutions to optimise planning and enhance recordkeeping.
- The *compliance response*: companies often justify their responses by highlighting compliance with the minimum safe manning certificate. Similar to push-back responses, the compliance response neglects the company's responsibility for selecting crew quantity and quality, thereby ignoring the impacts of reduced crew on excessive individual workload.
- The *exceptional circumstances response*: in most cases, violations are justified by exceptional circumstances due to an extraordinary accumulation of operational demands, as further detailed in the case studies presented in 4.2.3.
- The *future commitment response*: the imbalance between work demand and crewing level is often unquestioned. On rare occasions, some companies consider reviewing crewing requirements as a future option.

[188] The resulting categories were generated through a thematic analysis of the data (i.e. cases text).

Consequently, the responses tend to avoid assuming shore-based responsibility for ensuring adequate crew size and managing workload demands. Despite having the power to organise and manage shipboard workloads, shore-based management often refuses to take responsibility for the impacts of its crew-related decisions. A recent safety investigation report explicitly identified the vessel's manning level as insufficient to meet the realities of its operations and the resulting disproportionate workloads -despite compliance with minimum crew requirements- as a contributory factor in the near-grounding of the cargo vessel *Kairit* in Danish territorial waters, where crew fatigue led to the chief officer falling asleep on watch [35].[189]

In another vein, compensatory rest is often used as a simple, efficient tool to address certain violations. However, compensatory rest is an insufficient mechanism for mitigating fatigue from predictable operational peaks. Such activities (bunkering, supply, inspections and vetting, pilotage, canal operational, arrivals, departures, etc.), while not daily for all ships, are inherent parts of ship operation and cannot be dissociated from normal ship trade. Therefore, they cannot be classified as unpredictable or exceptional. The misconception that compensatory rest can justify recurring rest-hour violations is not only flawed but also risks normalising dangerous fatigue and reduced staffing levels.

Additional cases not included in the analysis

Finally, the cases show that violations of rest hours are frequently accompanied by other breaches in labour standards. For example, cases demonstrate that seafarers are not paid for all their overtime. Use of trainees/cadets to compensate for insufficient crewing appears in some instances, as does the assignment of lower-rank crew members to higher-rank tasks for which they are not paid. Additionally, cases show that working conditions-related complaints, especially about excessive hours, trigger companies' recrimination or retaliation.

Details about non-working time cases are not included. However, some cases are still connected with occupational safety and health and labour rights, such as an unhealthy working environment (e.g., no fresh food, low food assignment, harassment), contract breaches (e.g., delayed, outdated or unpaid salaries), delayed repatriation (even beyond 11 months), or no collective bargaining agreement (CBA) in place.

[189] The report states that 'While the principles ensure that the relevant conventions are complied with [i.e. the principles of minimum safe manning, laid down in IMO Assembly Resolution A.1047(27)] and hours of rest are respected, the safety investigation had concerns on whether the manning levels on board addressed the reality of the vessel's operations, be it cargo, and/or navigation. This occurrence revealed how crew behaviour suggested possibilities of disproportionate workloads, as manifested in their actions.' '[…] In view of the above, the safety investigation considered the vessel's manning level employed on board, as well as the accommodation capacity, which limited the manning levels, as contributory factors to this occurrence.'

Table 14. Cases of excessive work and work/rest hours violations in EU waters

Case number	Vessel characteristics			Working time issues	Reasons reported for violations	Company responses to the working time issues detected
	Type of vessel	Flag*	Area of operation			
Case 1	Oil/chemical tanker	Non-EEA Between 20-30 rank (white list)	Mediterranean Sea, Atlantic Ocean	Repetitive violations of work and rest hours for master and C/O	Due to operational demands	Statement about the company's commitment to fatigue and MLC Expression of surprise and shock at the violations detected Information about the future implementation of enhanced software (real- time check) and sharing of safety alerts to the entire fleet
Case 2	Cement carrier	EEA Between 10-20 rank (white list)	North Sea, Atlantic Ocean	Reiterative rest hours violations for Master, C/O ABs and OS	Bad planning of the crew	Promise of better planning for work and cargo operations Noting that manning levels above the minimum proven are sufficient
Case 3	General cargo	EEA Between 10-20 rank (white list)	Baltic Sea, North Sea	Excessive work hours	Bad planning of the crew	Explanation that the planning-responsibility of working time is on the captain Promise to improve work planning, distribution of work tasks, and to properly record the work and rest times
Case 4	Chemical/oil product tanker	EEA Between 10-20 rank (white list)	North Sea	Violation of work and rest hours Remove third officer despite keeping the same trade	Due to the ship's trade challenges	Noting the compliance with minimum safe manning Promise to hire a third officer based on the future trade challenges
Case 5	Container ship	EEA Between 10-20 rank (white list)	Baltic Sea, Atlantic Ocean, Mediterranean Sea	Frequent rest violations for all crew Not recorded national holidays	Due to the ship's trade challenges	Non explanatory response Proposal for different rest hours management Potential consideration of appointing additional crew
Case 6	General cargo	EEA Between 10-20 rank (white list)	Baltic Sea	Violation of rest hours for all crew, less than 10 hours in a 24 h period and no 6	No explanation	Absence of response from the company

Case number	Vessel characteristics			Working time issues	Reasons reported for violations	Company responses to the working time issues detected
	Type of vessel	Flag*	Area of operation			
				consecutive rest hours in a 24 h period		
Case 7	Bunkering tanker	EEA Between 10-20 rank (white list)	North Sea, Baltic Sea	Working beyond work hours and harassment for complaining	A seafarer trying to create problems	Explanation that a seafarer was identified as 'problematic and was disembarked' for personal reasons
Case 8	Cargo ship	Non-EEA Between 20-30 rank (white list)	North Sea, Alboran Sea, Marmara Sea	Adjustment (unreal) of records Insufficient crew	Bad planning of the crew	Explanation about the bad planning, which is the responsibility of the crew Explanation that seafarers should be warned and trained about work and rest hours
Case 9	Offshore support vessel	EEA Between 10-20 rank (white list)	English Channel	Repetitive and daily violations of rest hours for Master, C/O, 2nd ENG, without any rectification or compensatory rest.	Bad planning of the crew	Explanation that the company is preparing an action plan for complying with rest hours
Case 10	Cargo (cement)	EEA Between 10-20 rank (white list)	Atlantic Ocean	Work and rest hours discrepancies Understaffed (Master doing watching tasks)	Due to external factors beyond planning, like weather, changing schedules, berthing prospects, duration of various operations on board and ashore	Explanation that master stands watches, and this is standard practice on coasters Noting that the vessel is manned above the Minimum Safe Manning document Justification as a natural consequence that, from time to time, the rules of work and rest hours will be compromised Claim that crew safety, fatigue, and decent working and living conditions are the company's priorities
Case 11	General cargo	EEA Between 40-50 rank (grey list)	Baltic Sea, North Sea	Understaffed (Master doing watching duties), making it impossible to comply with rest hours	No explanation because there is compliance	Noting that the ship is manned as per Minimum Safe Manning and that the crew complies with work/rest hours

Case number	Vessel characteristics			Working time issues	Reasons reported for violations	Company responses to the working time issues detected
	Type of vessel	Flag*	Area of operation			
Case 12	General cargo	Non-EEA Between 20-30 rank (white list)	Baltic Sea, Atlantic Sea, Atlantic Ocean	Insufficient rest as per the trading area and the manning of the crew	No explanation because there is compliance	Explanation that the working time limits (max. 14 hours work per day) are observed, as per all vessel's records Noting that the vessel is manned above the Minimum Safe Manning document (8 to 7) to reduce fatigue of the crew
Case 13	General cargo	EEA Between 10-20 rank (white list)	North Sea, Atlantic Coast	Reiterated rest hours breaches for crew (e.g., master, C/O and AB wiper) not allowing 6 consecutive rest hours in a 24 h period and or 10 hours rest in more than 2 periods	No explanation because there are not crew complaints	Acceptance based on the lack of dissatisfaction with working time from the crew and payment of overtime in full Noting that the vessel is manned above the Minimum Safe Manning document Justification of the crew cabins limitation as an obstacle to increasing the vessel manning
Case 14	General cargo	EEA Between 10-20 rank (white list)	North Sea, Mediterranean Sea	Regular rest hours breaches	Attributed to human mistakes in the recording and bad planning of the crew	Explanation based on the crew (master) responsibility and recording mistakes Promise that the captain will be instructed to plan and avoid human error
Case 15	NA	NA	NA	Rest-work hours violations and falsification	Unavoidability of the hours of rest violations when the vessel either arrives or departs from port	Acknowledgement of breaches, only when at port
Case 16	Container	Non-EEA Between 40-50 rank (grey list)	Atlantic Ocean, North Sea	Reiterative rest-work hours violations and falsification	Insufficient training of crews on regulations related to work and rest hours	Explanation based on recording mistakes/typos by the crew Justification based on sufficient manning as the vessel is manned above the Minimum Safe Manning document, and the use of a software program to guarantee compliance

Case number	Vessel characteristics			Working time issues	Reasons reported for violations	Company responses to the working time issues detected
	Type of vessel	Flag*	Area of operation			
						Promise of crew training for strict adherence to national laws, regulations and collective agreements related to work and rest periods Promise of reviewing crew requirements in future if needed
Case 17	Container	EEA Between 10-20 rank (white list)	North Sea	Violations of the minimum rest hours for the deck officers, and not recording of all tasks (e.g., on duty while mooring)	Trade challenges, treated by the company as an extraordinary circumstance	Acknowledgement of breaches, because of busy trade with many ports calls Explanation of fulfilling all the vessel's safe manning requirements
Case 18	Chemical tanker	EEA Between 10-20 rank (white list)	Aegean Sea, Mediterranean Sea, North Sea	Breaches in minimum rest hours each month	Unavoidability of the hours of rest violations when at port	Assuming and justifying the breaches as normal coming from regular operations of the ship: mooring, bunkering, cargo ops, pilot
Case 19	Oil-chemical tanker	EEA Between 10-20 rank (white list)	Mediterranean Sea, North Sea	Rest-work hours violations and adjustments, leading the crew to work additional hours not considered overtime (then not paid)	A seafarer trying to create problems	Statement on crew's well-being protection as a priority Justification of using software for the objective recording of work and rest hours, and absence of breaches Explanation that a seafarer was identified as 'problematic and was disembarked'
Case 20	Container	EEA Between 10-20 rank (white list)	North Sea, Baltic Sea	Frequent work and rest hours violations and doing lashing and unlashing at ports	Due to operational demands, the sudden change in the ship's trade, which could not be managed/compensated on board due to short notice	Denial, there have been no violations regarding the rest hours Justification as a seldom situation
Case 21	General cargo	EEA Between 10-20 rank (white list)	Mediterranean Sea, North Sea, Baltic Sea	Violation of the minimum rest hours (i.e., 17 work hours per day) and insufficient manning	Unknown	File a complaint against the inspection/inspector

Case number	Vessel characteristics			Working time issues	Reasons reported for violations	Company responses to the working time issues detected
	Type of vessel	Flag*	Area of operation			
				(only two officers doing the watch, including the captain)		

*The vessel Flag is categorised under the rank it occupies in the 2024 'White, Grey and Black (WGB) list' by the Paris MoU (performance list valid 01-07-2025/30.06.2026). The WGB list ranks countries based on the safety and compliance of the vessels that fly their flag, from high-quality to poor-performance flags considered high or very high risk.

NA: Not available.

4.2.3 Selected cases of social dialogue on working time

Without being exhaustive of the social dialogue situation, the cases selected and described below illustrate how social partners interact when working time violations are noted on vessels calling EEA ports, either with EEA or non-EEA flags.

Four of the 21 cases reported in Table 14 are briefly discussed. These cases illustrate examples of 'exceptional circumstances' (case 1 and case 20), 'the push-back response' and 'learning and recording response' (case 3), and 'the compliance response' (case 16).

Case number 1. Violations of rest hours in Europe: Acceptance of the rest hours breaches as unavoidable

The ship is an **oil/chemical tanker** sailing under a non-EEA flag, calling various EEA ports for 1-3 days each. The number of port calls in 2024 was 42.

Problem statement

The ship has repeatedly violated rest-hour requirements, with crew members resting for less than 10 hours on successive days.

Reasons provided by the company/operator for violations

The ship presents many violations of rest hours related to the 'operational demand,' but 'this is compensated for before and after.' Additionally, the company manager stresses that rest violations cannot be avoided due to the dynamics of operations: 'Sometimes breaches are unavoidable, as planning sometimes changes, port rotations, pilotage boarding time, difficult tank cleaning, etc.'

However, those violations cannot be attributed to 'unexpected events' or 'force majeure', but they are inherent to the ship's normal course of operation under a commercial schedule. Providing compensatory rest signifies accepting that the crew bears the cost of commercial uncertainties in terms of working hours. In short, it means the crew size is insufficient to accommodate the ship's schedule-specificities.

Resolution provided

The routine use of compensatory rest for normal trade-related activities (such as bunkering, mooring, arrivals, and departures) has been normalised, implying that violations of rest hours are viewed as outside normal ship operations and effectively unavoidable implying that violations of rest hours are viewed as outside normal ship operations and effectively unavoidable.

Comments

The systematic use of compensatory rest options to cover operational-related violations indicates that peak workloads associated with the normal variability of ship operations have not been accounted for in the crew complement. It seems the crewing level was determined to support basic, predictable commercial operations without accounting for the dynamics of ship operations. Therefore, any deviation from the prediction, even if not related to any critical risk, affects the crew's capacity to rest. It reflects a limited appreciation of the complexity of ship operations and the need for a sufficient crew to cope with the variability inherent in routine ship operations.

Case number 3. Violations of rest hours in Europe: Placing all the responsibility on the crew

The vessel is a **cargo ship** sailing under an EEA flag, calling various EEA ports with a port stay of 24 hours or less. The number of port calls in 2024 was 89.

Problem statement

Exceeding work hours, recording many work hours.

Reasons provided by the company/operator for excessive work hours

The vessel presents many violations of rest hours due to 'the bad planning by the crew, who are responsible for working time.' The company representative stated that 'the record of working hours is the Captain's duty, and he should be filling them out correctly.'

Any violation is seen as the crew's responsibility. Crew members, including the captain, 'do not plan their duties well' and are 'bad reporters.'

Resolution provided

The problem is addressed by instructing the crew to improve work planning and better distribute work tasks, leading to proper observance of work and rest times. However, shore-based ship management does not consider excessive working hours a problem.

Comments

As the supposed crew's incapacity to manage the ship seems quasi-certain for this shore manager, appointing additional crew is not even considered. Vessel's intense operational schedule, as well as imbalance between work demands and crew size, are strictly disregarded, suggesting a total incapacity to accept responsibility for the impacts of onshore crewing decision-making. The superior position of shore management is clearly asserted, attributing the crew's regulatory challenges to their own managerial limitations.The response demonstrates a total inability to acknowledge the complexity of ship operations and accept any unpleasant feedback from the ship that may disturb business as usual.

Case number 16. Violations of rest hours in Europe: When compliance 'above' the minimum safe manning justifies it all

The vessel is a **container** sailing under a non-EEA flag, calling different EEA ports with a port stay of 24 hours or less. The number of port calls in 2024 was 129.

Problem statement

Repetitive rest-work hour violations and falsification, as evidenced during various inspections at different ports. The ship has even been detained before.

Reasons provided by the company/operator for the violations and record falsification

No explanation is provided for breaches of work and rest hours. The company associates record falsification with mistakes made by the crew during recording. Insufficient manning for the vessel's operations is ignored, and crew numbers are justified by complying with the minimum safe manning document.

Resolution proposed

Crew training on national laws, regulations, and collective agreements related to work and rest periods is proposed to avoid new reporting inconsistencies.

Comments

Compliance with the minimum safe manning requirements does not guarantee complicance with work/rest hours regulations, as thes requirements are often (incorrectly) interpreted merely as the minimum crew needed to navigate the ship safely, without accounting for additional operational demands. In the present case, the ship is engaged in intense operations, and given the demanding schedule, an understaffed crew will inevitably result in repeated work/rest violations and potential record falsification. Again, there is a mismatch between crew size and workload, which seems to be disregarded by shore management.

Case number 20. The case of feeders: Violations of rest hours 'related to the ship's trade'

The ship is a **containership feeder** sailing under an EEA flag, calling different EEA ports, mainly in the North and Baltic Seas, with short port stays (less than 24 hours). The number of port calls in 2024 was 116.

Problem statement

Regular violations of rest hours, as adduced during the inspection, include either working more than 14 hours per day or dividing the 10 rest period into more than 2 periods and not having 6 hours of consecutive rest in 24-hours.

Reasons provided for violations by the company/operator

The vessel presents many violations of rest hours 'related to the ship's trade' occurred 'as a result of the sudden change in the ship's trade that could not be managed/compensated on board due to short notice' as stated by the company.

The vessel is then justifying the rest hours violations as the natural result of accommodating changes to the trade at the expense of rest. However, the violations do not correspond to 'unexpected/ unscheduled events or due to a force majeure,' in which cases exceeding working time/disrupting rest time and providing compensatory rest would be justified.

Resolution provided

The company proposes no corrective action, claiming that the trade-related rest-hour violations occur only rarely and therefore warrant no further intervention.

Comments

Altering the crew's rest periods due to trade changes is unsustainable, leading to frequent violations of rest hours. While the company seemed to have been able to organise the new trading environment, nothing specific had been thought to assess the impact on the crew. The assumption is the crew's capacity to manage any situation, whatever the consequences for their compliance with work/rest hours. Compliance with work/rest hours regulations does not seem to be a priority for the manager, contrary to commercial activities. The new trading environment demands that the crew adapt without disrupting existing practices.

4.3 Synthesis: What these cases reveal about social dialogue

The examination of social dialogue at macro and micro levels suggests a persistent and structural imbalance between shipowners and sea workers.

Working time regulations engineered to satisfy sectoral interests

At the macro level, EU and international regulatory frameworks display a pronounced alignment with shipowners' interests, meaning the enactment of working time standards based on a 14-hour workday reference system. It implies that regulators endorse seafarers' and fishers' working time practices detrimental to health and safe operation.

This regulatory position reflects a form of sectoral exceptionalism, allowing exceptions to labour law and decent work principles. This regulatory stance also indicates the absence of penetration of scientific evidence on fatigue and human factors in the sector. Despite possessing the legal basis to strengthen international standards, EU and national institutions have neither discussed nor adopted scientifically-inspired standards, preferring the *status quo*. Without States' involvement and informed arbitration, social dialogue between employees and employers' partners becomes particularly imbalanced. As a result, the EU shipping and fishing standards reflect sectoral interests and fail to provide 'humane conditions of labour' (ILO Preamble) to those at sea.

Limited power of sea workers to influence decisions affecting their well-being

At the micro level, case studies of ships operating in EEA waters illustrate how this structural imbalance manifests in day-to-day shipboard operations. Inspections confirm widespread excessive working hours, insufficient rest, and recurrent violations linked to understaffing, commercial pressure in a demanding environment with reduced manpower.

When asked to comment on deficiencies, company's representatives rarely acknowledge structural inadequacies arising from reduced crewing or unrealistic demands. Instead, they deflect responsibility, failing to recognise how their own decisions on crewing levels and operational demands contribute to the problem. Respondents remain in defensive or counterattack posture, typically denying the existence or seriousness of the issue, blaming crew members for improper management, recalling compliance with minimum safe manning certificates, or invoking 'exceptional circumstances.'

The company strives to control the narrative to preserve its distance and assign responsibilities elsewhere. The storytelling is simple, designating seafarers as scapegoats, bearing the unique responsibility for violations and their correction. The violations are attributed to their supposed incompetence or inadequate training. This narrative conveniently deresponsibilises and diverts attention from the shore-based management. It seems that the framing of ship operation determined by shore decisions on crew levels and workloads is not assumed by the company or becomes invisible. Additionally, the compensatory rest category is transformed into a justification to permit all kinds of deficiencies.

The association of other types of deficiencies underscore a systemic disregard for seafarers' well-being.

Defective social dialogue and governance

Together, the macro- and micro-level findings depict an imbalanced social dialogue in which the arbitrary role of States seems seriously missing. This results in a governance environment tolerating downgraded workers' protection. The maritime governance, from regulation to enforcement, is undermined by the willingness to maintain a critical disconnect between decision-makers and operators. Consequently, regulators overlook the adverse outcomes of their policies, and companies deny the impacts of their decisions. Shifting responsibility seems to be the usual 'rule of the game' in shipping, with a straightforward motto: *'Nobody is responsible except the seafarers.'*

5 Main conclusions

The comparative analysis of sea and land-based workers in the EU reveals a significant gap in working time. The significance of this disparity questions the capacity of international and EU maritime regulators to protect sea workers as any other workers. Furthermore, the current maritime governance and related social dialogue appear to align with industry interests, thereby obstructing meaningful efforts to improve working conditions, particularly regarding working time.

1. Maritime labour standards remain significantly below those applied to other EU workers.

EU and international regulatory frameworks continue to permit work/rest regimes for seafarers and fishers that would be unacceptable in any shore-based sector and other transport workers. While the EU has the legal capacity to adopt stronger protections, it has consistently aligned its working time legislation for sea workers with the least protective standards set out in international conventions. This has reinforced a form of maritime exceptionalism in which operational considerations outweigh well-established labour law principles and neglect scientific evidence on fatigue and human factors.

2. Current maritime working time regulations prioritise sectoral and commercial interests.

The international and EU working time frameworks for seafarers preserve sectoral interests and maintain the *status quo*, rather than incorporating labour standards backed by science and ILO decent work standards recognised for other workers. Regulations continue to legitimise long work hours (e.g., 14-hour workdays), structurally diverging from norms recognised for land workers for over a century.

3. Working time at sea fails to provide conditions for health, safety, or work-life balance.

Available data on working hours for sea workers shows that:

- Seafarers' weekly working time averages are far above the 48-hour limit that defines 'excessive hours' under the ILO decent work criteria. Allowing up to 91 hours per week, the current maritime framework is in contradiction with the concept of decent work. Such workloads not only jeopardise ship operations but also have significant consequences for seafarers' and fishers' health and well-being.
- The shipping and fisheries sectors are characterised by a universal deviation from decent work across flag States and nationalities. EU-flagged and non-EU-flagged vessels show nearly identical patterns. EU nationals and non-EU nationals also work similar hours. This indicates a sector-wide structural issue, not one tied to nationality or flag administration.
- Notably, the yearly average working time for seafarers far exceeds that of any other worker category for any EU/EEA country. Even the lowest estimate (6 months onboard) exceeds the highest working time in the EU countries.
- While the situation for seafarers is dire and well-documented, the condition of working time for fishers is far worse. Unfortunately, the data on fishers remain scarce, invisibilising the sector's working conditions. Although global datasets are lacking, national studies (e.g., UK research) show that fishers routinely work 16–20-hour shifts, lack minimum rest, and often exceed the 91-hour weekly limit. In some samples, 85% work beyond the ILO's maximum allowed hours.

All the above indicate that the regulatory framework does not ensure a safe or healthy working environment for sea workers. The statistical evidence demonstrates that seafarers and fishers operate under conditions unheard of in any shore-based or other transport sectors, confirming two decades of research linking maritime working time to fatigue, health risks, and safety hazards. Excessive working time is not an outlier but a defining feature of maritime labour.

4. Social dialogue is structurally imbalanced, both at macro and micro levels.

At the regulatory (macro) level, the preservation of shipowners' interests seems to be overwhelming the debates and driving the adoption of standards, while seafarers' bargaining power remains downgraded. At the implementation (micro) level, labour inspections reveal frequent excessive working hours, interrupted rest, unrealistic operational demands, and chronic understaffing. Company responses commonly tend to deny responsibility and blame the crew. Interestingly, minimum safe manning certificates compliance as a line of defence seems to justify overwork and inaction after violations. It also seems that company representatives normalise breaches as 'operational necessities', while trying to redress the situation. This indicates a system in which workers have little influence over decisions that directly affect their health and safety, yet bear the full responsibility.

5. Excessive working time and inadequate rest are widespread, predictable, and systematically tolerated.

Across cases, violations of rest/work hours limits are routine features of ship operations, not exceptional events. Understaffing, compressed trading schedules, and the cumulative demands of port operations routinely exceed the crew's capacity. Compensatory rest is commonly invoked, not as an emergency measure but as a structural workaround that conceals chronic fatigue risks. Such practices demonstrate a governance environment that accepts, and in some cases rationalises, unsafe working conditions.

6. Sea worker well-being is undermined by a regulatory and operational system that prioritises commercial interest over anything else.

The lack of effective fatigue-risk management, combined with insufficient crewing and unrealistic workloads, creates an environment in which worker well-being, safety, and fundamental rights are consistently subordinated to operational demands. Additional issues, such as unpaid overtime, misuse of cadets, and punitive responses to complaints, further reflect a systemic disregard for seafarers' rights and an oppressive environment.

7. The current governance model undermines both decent work and safe ship operations.

The interplay of permissive regulations, weak enforcement, and unbalanced social dialogue results in a maritime labour regime that fails to protect workers while jeopardising safe ship operation. The effectiveness of maritime labour governance is called into question, as the system remains unable to address human factors and consequently generates unsafe conditions, as well as remains unable to provide working conditions that respect human limitations, health, and well-being.

In short, decent working time standards have not permeated the occupational reality of sea workers, despite the existence of regulatory instruments intended to protect their health, safety, and well-being. Unhealthy working hours affect a person's ability to make good decisions, and human factors science, as a core principle, takes into account individual capabilities and limitations at work. Consequently, ***no human-factors strategy in maritime can genuinely improve sea workers' well-being without ensuring decent working time.***

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