

Seafarers' employment – How to make EU shipping attractive?

Adrien ALAUX

Doctorant, Centre de Droit Maritime et Océanique,
Université de Nantes
Enseignant-chercheur en droit privé
Faculté de droit, d'économie et de gestion,
Université d'Angers

This paper is a sum up of an intervention made during European Shipping Week at Bruxelles, February 18th, 2020, The HOTEL. The topic of the panel was “How to make EU shipping attractive?” and was organised by ETF and ECSA¹. MEP Vera TAX was here and gave positive feedbacks and interests for this intervention.

The paper changes a little bit the nature of this intervention in order to be conformed to review's formalism. But as it was prepared for a subjective speech whose aim was to make proposal for EU seafarer employability, this paper cannot respond to a full neutral condition of a scientific paper. Also, this article is for general information purposes only and does not reflect the opinion of the writer.

Introduction:

Transport and competition policies constitute an important dimension of European Union; indeed, they have a key role in TFEU². Nevertheless, the treaty knows a title on social policy which aims, with European Social Charter and community charter of the Fundamental Social Right of Workers, the promotion of employment. By the way, Treaty on European Union³, in its article 3 § 3 defends the same goal:

“Aiming at full employment and social progress (...) it shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations”.

On a legal point, nothing in treaties explains if transport and competition rules predominate on social rules. In fact, does EU policy is as focused on economic issues as on social ones? For sure, it is a delicate balance. However, can we showdown these interests? They obviously both have an impact on each other.

¹ For a global sum up of the panel, see: <https://www.etf-europe.org/the-future-of-european-shipping-needs-to-be-social/>

² Consolidated version of the Treaty on the Functioning of the European Union, *OJ C 326 of 10.26.2012, p. 47–390.*

³ Consolidated version of the Treaty on European Union, *OJ C 326 of 10.26.2012, p. 13–390.*

Panel discussion is about “how to make EU shipping attractive. Seafarer Employment”. My understanding on this subject is sensibly different, may I change it a little bit to “*How to make EU seafarers more attractive in a global shipping industry?*”.

Discuss of employment in EU shall not be restricted as social or labour law: maybe we can find in competition law important effects on the employment level. Before any proposal, it is necessary to make, *on the one hand*, an assessment on EU seafarers’ employability (I), then, *on the other hand* expose an instrument: State Aid (II).

On the one hand,

I. EU seafarers’ employability assessment

In order to make a relevant proposal, an assessment on employability is needed. *First*, I will introduce a well-known and well-used fact: anti-competitive effects on wage level (A), *then*, it triggers a huge social consequence in EU: a decrease of EU seafarers’ employability (B).

A. A fact: an anti-competitive wage & social levels

First, anticompetitive wage level in maritime is obvious and mainly possible because of the globalization of this industry, especially thanks to flags of convenience (FOCs) and lower ILO and IMO standards than most of EU Member States. Today, ILO minimum monthly basic wage for a seafarer is 641\$/month⁴. Is this minimum on a legal point risks to become a maximum?

In order to be more specific, FOCs are allowed by United Nations Convention on the Law Of the Sea (UNCLOS)⁵. Article 91 of the Convention is about *nationality of the Ship*⁶, which allows in the first place freedom of navigation on the high-sea, and secondly, shipowners to create a link between their ship and a legal system. This link must be a *genuine link*⁷, Pr. Patrick Chaumette considers:

« *La loi du pavillon assure la juridicité de la haute mer et offre un rattachement stable au navire, en quelques eaux qu’il se trouve. (...), elle gouverne traditionnellement la condition juridique de l’équipage* »^{8,9}

In fact, this mechanism lets the competitiveness sensible to *forum shopping*: social and labour costs¹⁰ are the easiest way to save money for shipowners. To sum up: there are main factors which play a negative effects on EU seafarers’ employability: FOGs, which allow shipowners

⁴ January 2020.

⁵ United Nations Convention on the Law Of the Sea, 1982. Available on: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

⁶ Article 91 of UNCLOS:

1. “*Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.*

2. *Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect* “

⁷ See article 91 of UNCLOS.

⁸ Patrick CHAUMETTE, « La compétence juridictionnelle internationale des tribunaux français à propos du séjour des marins étrangers dans les ports français ». Available on [http://www.obs-droits-marins.fr/ bibli/articlesPage/477/docs/dip_marins_pc.pdf](http://www.obs-droits-marins.fr/bibli/articlesPage/477/docs/dip_marins_pc.pdf) [last visit: 03/09/2020].

⁹ Free translation of the author: *Law of the Flag provides a legal system in High Sea and offers a stable link to the ship. She rules a legal structure for Seafarers on board.*

¹⁰ It is necessary to split social from labour costs: labour is mainly wages and social is mainly employer contributions.

to not be submitted to expensive social protection by recruiting as much as they can (if the national law of the ship provides this possibility), low minimum wages combined with maximum quota of EU seafarers for an European flag. Thus, shipowners even with a French flag can recruit Philippians with a smaller wage than a French or EU seafarer.

The part of the contract (anonymized) below is a good example of the second hypothesis:

Republic of the Philippines
Department of Labor and Employment
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION

CONTRACT OF EMPLOYMENT

KNOW ALL MEN BY THESE PRESENTS:

This Contract, entered into voluntarily by and between:

Name of Seafarer : _____
Address : _____
SIRB No. : _____ SRC No. : _____
Licence No. : _____ DOB : _____

hereinafter referred to as the Employee

and

Name of Agent : _____
For and behalf of : _____
(Principal / Country / Address)

for the following vessel:

Name of Vessel : _____
Official Number : _____ Gross Registered Tonnage (GRT) : _____
Flag : **FRENCH** Year Built : 2004 Classification Society : _____

hereinafter referred to as the Employer,

WITNESSETH

1. That the employee shall be employed on board under the following terms and conditions:

1.1 Duration of Contract :	6 months		
1.2 Position :	Ableseaman		
1.3 Basic Month Salary :	\$ 563.00	Company Bonus :	
1.4 Hours of Work :	44 hrs/wk		
1.5 Overtime :	\$ 314.00	/ G.O.T. 85 hrs \$ 3.69/hr	0
1.6 Vacation Leave Pay :	\$ 206.00		
1.7 Point of Hire :	Manila, Philippines		

- The herein terms and conditions in accordance with Governing Board Resolution 09 and Memorandum Circular No. 10, both Series of 2010, shall be strictly and faithfully observed.
- Any alterations or changes, in any part of this Contract shall be evaluated, verified, processed and approved by the Philippine Overseas Employment Administration (POEA). Upon approval, the same shall be deemed an integral part of the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On Board Ocean-Going Ships.
- Violations of the terms and conditions of this Contract with its approved addendum shall be ground for disciplinary action against the erring party.

IN WITNESS WHEREOF, the parties have hereto set their hands this
day of _____ 2012 at Manila, Philippines.

Verified and approved by the _____

2012

For the Employer

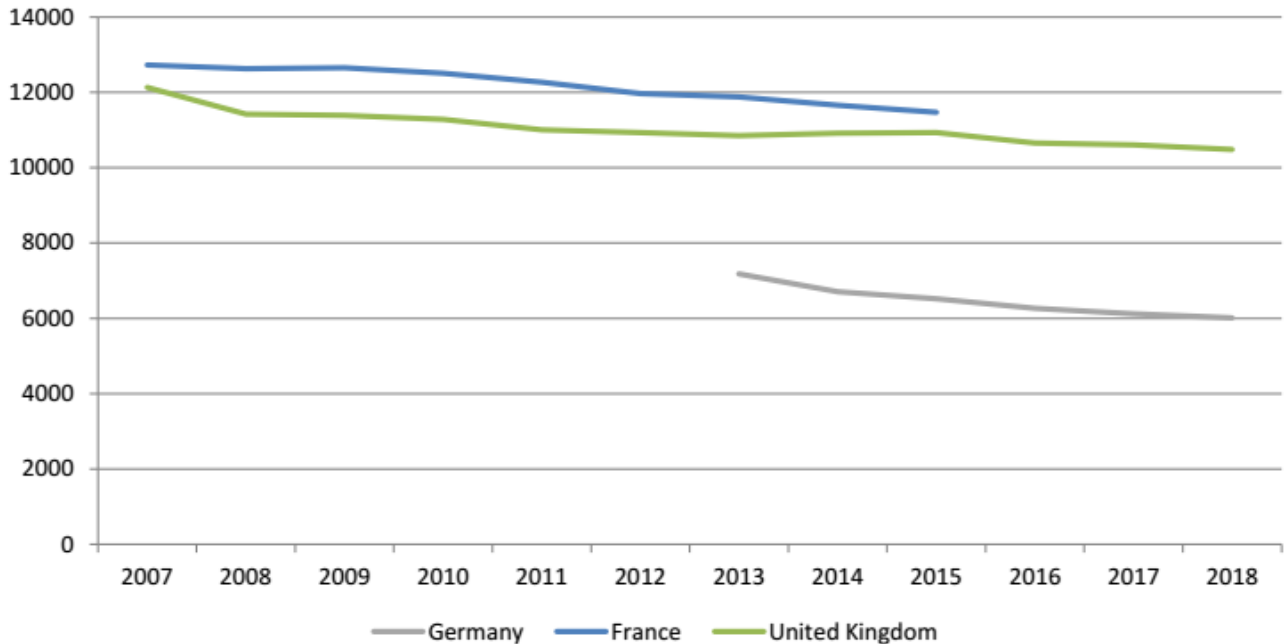
POEA Official

It is important to recall that this situation is totally legal. By showing this kind of contract, the author of this paper only tries to explain how EU seafarers' employability is affected.

B. A consequence: a decrease of employability

Then, in several official reports, a decrease attraction of EU seafarer employability is underscored¹¹. Are questions of social and labours costs the only explanation of this decrease? Some reports explain the negative impact of digitalization on employment in vessels, but also in ports¹².

Figure 1: Seafarer's employment in France, Germany and the United Kingdom 2007-18



Note: For UK: certified active seafarers. Germany and France: social security affiliates.

Yet, EU is informed of this concern: white paper (COM 2011)¹³ explains the issues of an important employment policy in transports: (pt.37) *“Market opening needs to go hand in hand with quality jobs and working conditions, as human resources are a crucial component of any high quality transport system. It is also widely known that labour and skill shortages will become a serious concern for transport in the future. It will be important to align the competitiveness and the social agenda (...)”*.

Quality of seafarer cannot be reach with a low wages employment policy, actors should integrate in their recruitments much more skill abilities and *“a true European know-how”*.

¹¹ Sources: <https://www.itf-oecd.org/maritime-subsidies-do-they-provide-value-money> [Last visit : 03/09/2020]

France: <http://www.enim.eu/lenim/regime-social> ;

Germany: https://www.kbs.de/DE/UeberUns/ZahlenundFakten/ZahlenundFakten_node.html;jsessionid=40C778EAA97D470557DDB950584A1BE9;

United Kingdom: <https://www.gov.uk/government/statistical-data-sets/seafarer-statistics-sfr>

¹² See for example: unctad.org/en/PublicationsLibrary/rmt2018_en.pdf [last visit: 03/09/2020].

¹³ WHITE PAPER COM(2011) 144 final: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, Brussels, 28.3.2011

On the other hand,

II. An instrument: State Aid

First, it is important to present objectives of a State Aid (A) and, *then*, proposal for EU seafarers' employment (B).

A. Objectives of a State Aid

First, it may be necessary to remind or explain what is, according to TFEU, a State aid. It is an advantage in any form (financial or not) from a national authority of a Member State to an undertaking. Article 107 of TFEU prohibits this practice unless it allows EU development to growth. Indeed, TFEU foresees exemptions, and, as question is raising, maritime sector knows some.

EU maritime policy works with state aids, but to be compatible with the internal market, they must respect some conditions exposed in Commission communication C (2004) 43 – Community guidelines on State aid to maritime transport¹⁴. According to this very communication, general objectives are to “*maintaining and improving maritime know-how and protecting and promoting employment for European seafarers*”. Of course, another aim is to “*encouraging the flagging or re-flagging to Member States’s Register*”. Moreover, it is written about *labour-related costs*, that “*reducing fiscal and other costs [...] should directly stimulate the development of the sector and employment*”.

In the same way, Council regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of TFEU to certain categories of horizontal State aid¹⁵, which is not a specific “maritime regulation”, claims, at recital 7: “*The Commission should be enabled to declare that, under certain condition (...) aid in favour of employment and training*”. This disposition is expressly established at article 1 of the very regulation named block exemptions : “*the Commission may, by means of regulations adopted in accordance with the procedure laid down in Article 8 of this Regulation and in accordance with Article 107 TFEU, declare that the following categories of aid are compatible with the internal market and are no subject to the notification requirement of article 108 (3) TFEU, (...) (iv) “employment and training*”.

So, if an aid respects conditions of article 107, and both guidelines and regulation Commission could provide respectable measures related to attractiveness of EU seafarers' employment.

B. Proposal

Then, we must precise, some maritime aids already exist (tonnage tax, fiscal exemptions for shipowners...). But today, it seems they are not enough conditional on employments, like it has been aimed for Dutch seafarers' employment in a recent decision about Netherlands

¹⁴ Commission communication C(2004) 43 – Community guidelines on State aid to maritime transport, *OJ* 2004/C 13/03 of 17.1.2004, p. 3–13.

¹⁵ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (codification) (Text with EEA relevance), *OJ L* 248 of 9.24.2015, p. 1–8.

Prolongation of the Dutch tonnage tax scheme for ship managers, large vessels and service vessels¹⁶. Objectives of this aid is submitted at 25th point of the Commission decision: “*When the Dutch authorities extended the scope of the Dutch tonnage tax scheme to service vessels they expected the flagging-in of eight service vessels with an expected added value to the economy of EUR 25 million per year (EUR 3.1 million per vessel) and employment for 400 people (50 people per vessel)*”.

Moreover, this proposal is in the trend demand of EU seafarer high skills due to the increase of technical complexity of maritime industry and new ships. Some studies¹⁷ demonstrate how much shipowners need new high skills. So now, evolution of the sector should be a new opportunity to make EU seafarer more attractive with high social conditions.

To conclude, subsidies should be conditional on quantified commitments on recruitments and high-level formations from undertakings.

¹⁶ Authorisation for State aid pursuant to Articles 107 and 108 of the Treaty on the Functioning of the European Union — Cases where the Commission raises no objections, *JO C 277 du 16.8.2019, p. 1–13*.

¹⁷ *Op. Cit.* ITF Report.