

Sol Skinnarland and Magnus Mühlbradt

# **The good life at sea**

## **Wages and working conditions on foreign ships in Norway**



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Wages and working conditions  
on foreign ships in Norway

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*Det gode liv til sjøs*

*Lønns- og arbeidsvilkår på utenlandske skip – norsk handlingsrom*

Translated by Erik Hansen, Akasie språktjenester AS

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## Preface

This report has been written on commission from the joint Cooperation Committee of the Norwegian Confederation of Trade Unions (LO), the Norwegian Seamen's Union and the Norwegian Maritime Officers' Association. The report is a follow-up of Fafo Report no. 2010:08: "Protectionism or legitimate protection? On public regulation of pay and working conditions in Norwegian maritime cabotage". In this report, we have attempted to gather and update the material from the previous report, while also addressing certain additional issues. Updated figures on cargo volumes on ships in Norwegian domestic traffic have been retrieved from Statistics Norway's port statistics. The overview of the regulations of cabotage in countries inside and outside the EU is based on sub-contracts with international research colleagues.

We wish to thank Jaqueline Smith in the Norwegian Seamen's Union and Hans Sande in the Norwegian Maritime Officers' Association, who both kindly agreed to be interviewed.

Sol Skinnarland has acted as project manager and written Chapters 1, 2, 3 and 6, while Chapter 4 was written by Magnus Mühlbradt. Chapter 5 was written by both these authors in collaboration. Kristin Alsos and Anne Mette Ødegård at Fafo have been responsible for the quality assurance of the report.

Oslo, 24 March 2014

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# 1 Introduction

For many years, the traffic between Norwegian ports – as well as from Norwegian ports to installations on the Norwegian continental shelf – remained dominated by vessels registered in Norway. In recent years, however, some of this traffic has been taken over by vessels registered abroad. The topic of Fafo Report no. 2010:08: “Protectionism or legitimate protection? On public regulation of pay and working conditions in Norwegian maritime cabotage” was the extent to which Norway may regulate wages and labour conditions in domestic shipping and the traffic to the continental shelf. The present report is an update of the report from 2010. Some of the content in this report is therefore retrieved from the 2010 version, meaning that we repeat sections that naturally belong in the present edition. This text is entered in brackets. In addition, we describe prevailing regulations in a number of other countries, within as well as outside the EU. The report consists of three main elements. Chapter 3 describes recent developments in domestic traffic to and from domestic ports, and the flags under which this transport is undertaken. This update is based on publicly available port statistics retrieved from Statistics Norway (SSB).<sup>1</sup> Chapter 4 outlines prevailing regulations and the national leeway for regulating wages and labour conditions on foreign vessels performing cabotage in Norwegian waters and on the Norwegian continental shelf. Moreover, we repeat some of the main items from Fafo Report 2010:08 on international regulations. Chapter 5 describes regulations of wages and labour conditions on foreign vessels in selected European countries, including Sweden, Denmark, the UK, the Netherlands, France, Italy, Spain and Portugal. In addition, we provide an account of regulations of wages and labour conditions on foreign vessels in Brazil and the USA, and to some extent also in India. The descriptions of regulations in these countries are based on sub-contracted deliveries from researchers and experts in these countries. The sub-contracts (descriptions) are derived from a set of questions that the researchers were requested to answer. The questions are included in Appendix 1. Within the framework of this project we have been unable to undertake any quality assurance of the content of these deliveries.

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<sup>1</sup><https://www.ssb.no/statistikbanken/selectvarval/Define.asp?subjectcode=&ProductId=&MainTable=Havnest2&nvl=&PLanguage=0&nyTmpVar=true&CMSSubjectArea=transport-og-reiseliv&KortNavnWeb=havn&StatVariant=&checked=true>  
<https://www.ssb.no/statistikbanken/selectvarval/Define.asp?subjectcode=&ProductId=&MainTable=Havnest3&nvl=&PLanguage=0&nyTmpVar=true&CMSSubjectArea=transport-og-reiseliv&KortNavnWeb=havn&StatVariant=&checked=true>

## 2 Background

One of the main principles in international shipping is that cargo owners are free to choose the vessels they want to hire for import and export purposes. Flag discrimination is regarded not only as a threat to the cargo owners' right to free choice of transporter, but also to shipping companies that operate as transporters between ports other than their domestic ones, as Norwegian shipping does. Norway has opposed such flag discrimination internationally.<sup>2</sup>

The development of global shipping after the Second World War was characterized by strong expansion. Norwegian authorities and shipowners opposed protectionist tendencies in the shipping markets since the risk of being excluded from access to competition for cargo transport was regarded as a serious threat to the Norwegian shipping industry. In recent decades, the Norwegian shipping industry has undergone restructuring involving new forms of low-cost operation and a focus on new markets, such as offshore petroleum.<sup>3</sup>

Governments have registers of vessels that have a special affiliation to their state. The conditions for being entered in a state's ship register vary. Some states require a certain amount of real affiliation, while other registers are open to all. States that have open registers define few requirements, and registration in such states is referred to as registering under flags of convenience. This is because such registration implies that in a number of respects the vessels become subject to the legislation of the registering state (the flag state). Registration under a flag of convenience is often carried out to avoid regulations and taxation imposed by other states.<sup>4</sup>

The Norwegian International Ship Register (NIS) was established in 1987. The main objectives of its establishment were (1) to ensure that Norwegian-owned vessels were registered under a Norwegian flag, (2) to improve the competitiveness of vessels registered in Norway in international traffic and (3) to sustain the employment of Norwegian seamen. After the establishment of NIS it became permissible to use foreign crews who were paid according to the wage levels prevailing in their home country.<sup>5</sup> NIS vessels should not carry cargo or passengers between Norwegian ports or ply regular and fixed routes between Norwegian and foreign ports. In this context, oil and gas installations on the Norwegian continental shelf are also considered to be

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<sup>2</sup> <http://snl.no/skipsfart#menuitem2>

<sup>3</sup> <http://snl.no/skipsfart#menuitem2>

<sup>4</sup> See [snl.no/skip](http://snl.no/skip)

<sup>5</sup> <http://www.sjofartsdir.no/fartoy/registrere-fartoy/norsk-internasjonalt-skipsregister-nis/>



Norwegian ports.<sup>6</sup> However, exemptions from this main rule can be made by way of an approval procedure in which the trade unions are included in a hearing round, see Chapter 3. The scheme is administered by the Norwegian Maritime Authority.<sup>7</sup> The NIS Act regulates, for example, the type of traffic that NIS vessels may pursue, as well as wages and labour conditions on board. Wages and labour conditions shall be defined in a collective agreement that can be signed by Norwegian and/or foreign trade unions (Section 6).

The NOR register was established in 1992, incorporating a number of local registers. Rules for the register are found in Chapter 2 of the Norwegian Maritime Code<sup>8</sup> of 1994. NOR vessels are not subject to any restrictions regarding freight between Norwegian ports or to the Norwegian continental shelf. While wages and labour conditions on NOR vessels can be regulated by Norwegian legislation and collective agreements, Norway has not interfered in the wages and labour conditions that prevail on vessels sailing under another flag.

Any Norwegian vessel of a length of 15 metres or more must be entered into the NOR or the NIS register. In addition to regulations of the vessels' area of operation, the main difference between the registers is that NIS vessels can be registered with a looser connection to Norway than that required for registration in NOR. Compared to NOR vessels, NIS vessels thus have a somewhat freer position with regard to certain parts of Norwegian legislation, for example regulations of the crew's wages and labour conditions.

Whether increased competition in the European cabotage market would entail any consequences for Norwegian employees was not a topic when the cabotage regulations were introduced. Traditionally, Norway has imposed no restrictions based on nationality on vessels in domestic traffic, i.e. carriage of freight between Norwegian ports, including the continental shelf. This means that vessels registered in other countries may also carry freight between Norwegian ports. When the opportunity for maritime cabotage was opened for the EEA countries (see Chapter 4) this was not a new addition to Norwegian law. On the contrary, this liberalization was regarded as an advantage for Norwegian actors since the NOR vessels were granted access to a larger market. The Ministry of Trade and Industry pointed out that the regulations benefited Norwegian interests. In addition, it was pointed out that increased attention to short-distance shipping was one of many instruments that could help reduce the volume of European road transport (St.prp. nr. 46 (1997-98)).

With a relatively high wage level among Norwegian crews compared to those from other countries, vessels under foreign flags will have significantly lower costs and thus

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<sup>6</sup> See Section 4 of the NIS act.

<sup>7</sup> Report no. 31 to the Storting (2003-2004) Chapter 6. See Regulations of 11 August 1989 no. 802 on extension of the operational area for cargo ships registered in the Norwegian International Ship Register.

<sup>8</sup> The Norwegian Maritime Code of 24 June 1992 no. 39.

lower freight rates than NOR vessels. An absence of regulations of wage levels and labour conditions may thus lead to low-wage competition – meaning competition at the cost of the employees’ wage levels and labour conditions. A somewhat parallel situation has arisen on the mainland after the EU enlargement to Eastern Europe in 2004. Here, a number of measures have been taken to counteract this trend, and general application of collective agreements in vulnerable industries has been a key instrument (see e.g. Eldring et al. 2011).

In Chapter 4, we will take a closer look at the leeway that Norwegian authorities have with regard to the regulation of wage levels and labour conditions in maritime cabotage. First, in Chapter 3, we will look in more detail at the kinds of vessels that engage in freight along the Norwegian coast and to installations on the continental shelf and examine how this has developed over time.

### 3 Development trends in domestic traffic

Statistics Norway (SSB) prepares data on domestic cargo transport (port statistics). These statistics include information on the flag carried by the vessels. We distinguish between vessels registered in NIS and NOR, vessels registered under flags of convenience<sup>9</sup> and vessels sailing under other foreign flags. Norway's latitude to regulate the wage levels and labour conditions of the crew may vary according to the flag carried and the type of transport practised by the vessel. As of today, vessels registered in NIS are not permitted to carry cargo or passengers between Norwegian ports or follow a regular route between Norwegian and foreign ports, but may obtain an exemption to undertake such freight. Such exemptions are granted by the Norwegian Maritime Authority, and the trade unions and the employers' associations must be consulted in such cases. In other words, the social partners may provide input regarding whether permission should be granted, but have no right to veto a decision.<sup>10</sup>

Figure 3 shows that in 2012 somewhat less than three of every ten tonnes of cargo in Norwegian domestic traffic<sup>11</sup> were carried by vessels registered in NOR. This proportion was reduced from 56 per cent in 2008 and 62 per cent in 2003 (Figure 3.2). In other words, the proportion carried by NOR vessels has been halved from 2003 to 2012. During the same period, the domestic cargo volume increased by 20 per cent. Thus, the Norwegian fleet did not only have a smaller market share but also carried fewer tonnes in 2012 than in 2003.

In 2012, one-third of the volume was carried by vessels registered under flags of convenience, while nearly a quarter (24 per cent) was carried by vessels in other registers. Most of the ships sailing under a flag of convenience are registered in the Bahamas. The largest change from 2008 to 2012 is in the proportion of "other foreign flags", with an increase from 10 per cent in 2008 to 24 per cent in 2012 (see Figure 3.2).

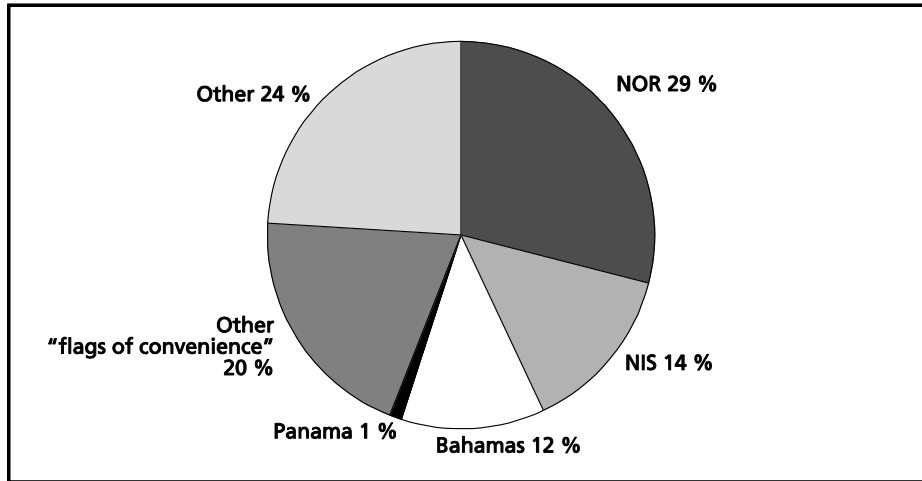
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<sup>9</sup> The International Transport Workers' Federation (ITF) has drawn up the list of "flags of convenience".

<sup>10</sup> See regulations issued pursuant to Section 4 of the NIS Act.

<sup>11</sup> By domestic traffic we here refer to cargo, not passenger freight.

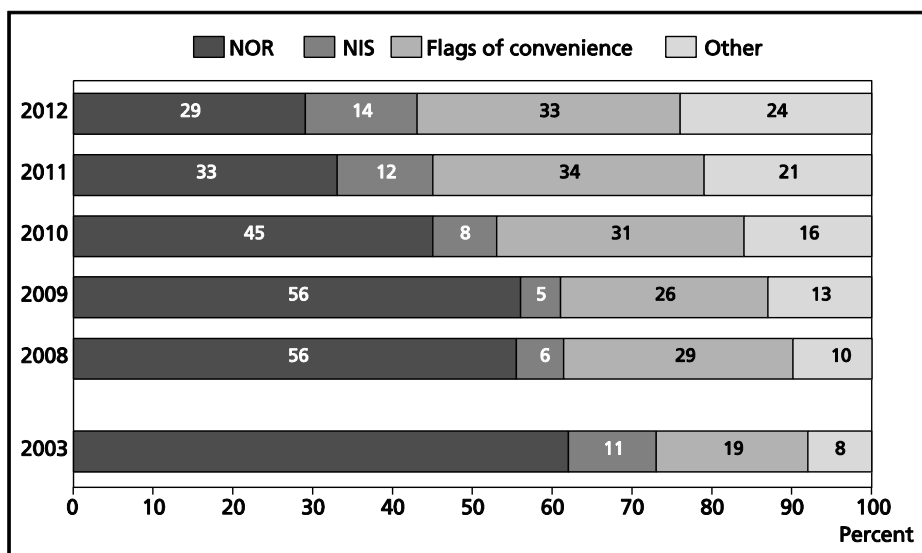
Figure 3.1 Port statistics. Cargo volume by flag, domestic traffic 2012



Source: Author's calculations on the basis of Statistics Norway data.

The proportion of vessels registered under flags of convenience increased from 19 to 33 per cent during the period 2003–2012. The proportion of vessels registered in NIS was 11 per cent in 2003, but then decreased before stabilizing at 12–14 per cent. In total, vessels sailing under a foreign flag accounted for 57 per cent of the cargo carried along the Norwegian coast in 2012 compared to 27 per cent in 2003. The strongest drop in the market share of NOR vessels occurred between 2009 and 2011.

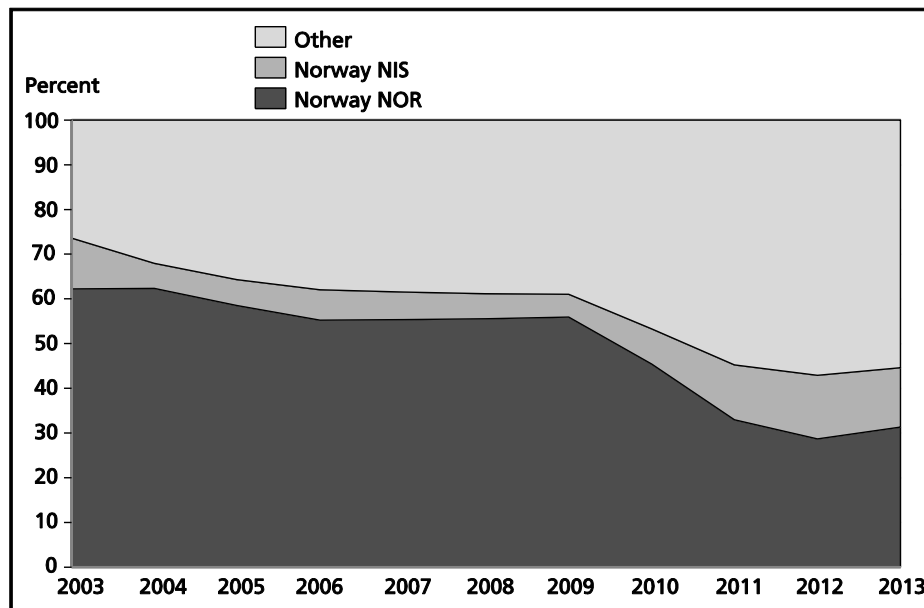
Figure 3.2 Port statistics: cargo volume by flag, domestic traffic 2003, 2008–2012



Source: Author's calculations on the basis of Statistics Norway data.

Figure 3.3 shows the development also for the period 2003–2008, as well as figures for the three first quarters of 2013. Here, the category “Other” also includes vessels registered under flags of convenience.

Figure 3.3 Port statistics: average market shares for the years 2003–2013



Source: Author’s calculations on the basis of Statistics Norway data.

## The top ten

Some flags predominate more than others with regard to freight between Norwegian ports. Table 3.1 shows those ten flags that have the largest proportion of the total cargo volume. The figures are averages of Statistics Norway’s quarterly updates for 2012. As can be seen in the table, NOR vessels account for the largest proportion of the cargo volume in Norwegian domestic traffic in 2012, followed by vessels registered in NIS and the Bahamas respectively. On the list of flags of convenience drawn up by the International Transport Workers’ Federation (ITF), Bahamas, Malta, Antigua and Barbuda and Cyprus are included.<sup>12</sup> In other words, the list comprises EU Member States as well as third countries.

<sup>12</sup> This list was drawn up by the ITF’s Fair Practice Committee, which is a joint committee by ITF seafarers’ and dockers’ unions, see <http://www.itfglobal.org/flags-convenience/flags-convenience-183.cfm>.

Table 3.1 The top ten, averages 2012, proportion of cargo volume by flag

	Flag	Proportion of cargo volume (%)
1	NOR	33.4
2	NIS	16.5
3	Bahamas	13.5
4	Malta	6.4
5	Sweden	6.2
6	UK	5.2
7	Antigua & Barbuda	5.0
8	Netherlands	4.7
9	Isle of Man	4.7
10	Cyprus	4.2

Source: Author's calculations on the basis of Statistics Norway data

Table 3.2 shows a corresponding list for 2008. As can be seen, the Bahamas was also at that time the predominant foreign country of registration for vessels in Norwegian domestic traffic. New countries on the list for 2012 are the UK, the Netherlands and Cyprus. All the vessels registered abroad that are found on the lists for both 2008 and 2012 have increased their market share. Countries and flags that have disappeared from the list include Panama, Liberia and St. Vincent and the Northern Grenadines.

Table 3.2 The top ten, averages for 2008, proportion of cargo volume by flag

	Flag	Proportion of cargo volume (%)
1	NOR	61.3
2	Bahamas	14.0
3	NIS	6.2
4	Panama	5.1
5	Sweden	4.0
6	Antigua and Barbuda	2.0
7	Isle of Man	2.0
8	Liberia	1.9
9	St Vincent and the Northern Grenadines	1.8
10	Malta	1.7

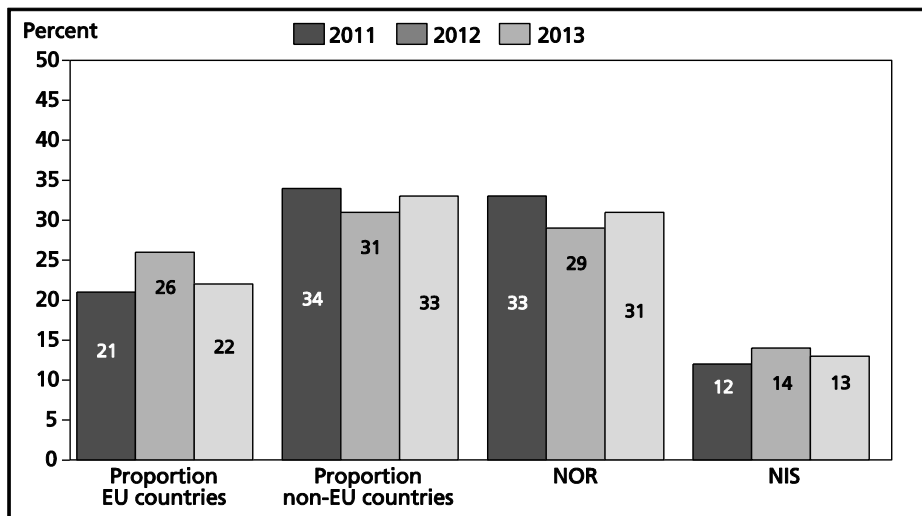
Source: Author's calculations on the basis of Statistics Norway data.

### Trends in cargo volume and EU member states

Figure 3.4 shows the proportion of cargo volume in Norwegian domestic traffic carried by vessels registered in NOR and NIS, as well as in countries within and outside the EU. Figures for 2013 are averages for the first three quarters, and are therefore not

entirely comparable to those for 2011 and 2012. The proportion of cargo volume carried by vessels registered in the EU amounted to somewhat more than 20 per cent in 2011, rose to 26 per cent in 2012, but had receded to 22 per cent by the third quarter of 2013. The proportion of non-EU countries amounted to 34 per cent in 2011, but declined slightly in 2012, ending at 33 per cent in 2013. The proportion of non-EU countries amounted to 34 per cent in 2011, but declined slightly in 2012, ending at 33 per cent in 2013. The proportion of non-EU countries amounted to 34 per cent in 2011, but declined slightly in 2012, ending at 33 per cent in 2013.

Figure 3.4 Port statistics: proportion of cargo volume in different flag categories



Source: Author's calculations on the basis of Statistics Norway data. Figures for 2013 are for the first three quarters.

## 4 Regulation of wage levels and labour conditions on vessels in Norwegian domestic traffic

In this chapter we will describe the latitude for regulation of wage levels and labour conditions on vessels in Norwegian domestic traffic. We will first address regulations stipulated by international law, and then look at Norwegian statutory regulations.

### 4.1 International law

[The 1982 UN Convention on the Law of the Sea (UNCLOS)<sup>13</sup> is an international agreement regulating traffic and economic activity on the open seas, as well as the rights that coastal states have within their regions. It came into force in 1994 and has been ratified by 160 countries. Norway endorsed it in 1996. The convention regulates the sovereignty of flag states over their ships. Article 94(1) reads:

Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.<sup>14</sup>

The flag state may, however, share its jurisdiction over the vessel with the coastal state. In UNCLOS, each country's maritime boundary was set at 12 nautical miles off the coast.<sup>15</sup> This area is referred to as the territorial waters (or the territorial sea). In principle, countries have the same authority within these boundaries as they do over their terrestrial territories. In international law, the term 'coastal-state jurisdiction' is applied to what a state can control in its area. Foreign ships have the right to move in these waters. The coastal state may adopt regulations for *passage through its territorial waters*, including with regard to maritime safety, the protection of navigational aids, cables and

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<sup>13</sup> United Nations Convention on the Law of the Sea (UNCLOS).

<sup>14</sup> Article 91 of UNCLOS means there must be a genuine link between a state and a ship registered under the flag of the state. Dalheim et al. (2008:97) point out that '[f]or ships under so-called flags of convenience, questions may be asked about whether there is a genuine link between the state and the ship. If no real link is in evidence, it may be claimed that the regulations of the Convention on the Law of the Sea with regard to the flag state's exclusive jurisdiction over its ships do not apply. What link the convention demands, however, is not clear.' (Translated from Norwegian)

<sup>15</sup> A coastal state may define an adjoining zone of a further 12 nautical miles in order to exercise jurisdiction over activities such as smuggling and illegal immigration.



pipes, the conservation of living resources in the sea and the environment. The regulations, however, cannot extend to the design, construction, manning or equipment of foreign ships, unless the regulatory framework implements generally recognized international regulations or standards (UNCLOS, Article 21). In other words, when ships pass through, it is the flag state's jurisdiction that comes into play as far as working conditions aboard the ships are concerned.

On the other hand, when foreign-registered ships sail in internal waters (*domestic or cabotage trade*), in principle it is the coastal state's jurisdiction that applies. Here many of the major shipping nations apply restrictions intended to protect these nations' citizens (shipping companies or seafarers).

Shelf state jurisdiction (the authority each country has over its continental shelf) has a more restricted meaning as far as vessels are concerned. Here it is the right to extract natural resources that is most important. The principle of the coastal state's right to its continental shelf was affirmed at the UN's Geneva Conference in 1958. The outer limits of the continental shelf would be set at a water depth of 200 metres or as far from the shore as it was possible to extract resources on the seabed. In addition, every country with a coast was granted the right to proclaim its own economic zone, extending up to 200 nautical miles from the coast. Within this limit, each country has the right to extract natural resources.<sup>16</sup> The rights of a coastal state with regard to its continental shelf must not infringe or result in any unjustifiable interference with navigation or the rights and freedoms that other states have under UNCLOS (Article 78).

Under UNCLOS, the flag state's regulations must agree with conventions drawn up within the UN International Maritime Organization (IMO)<sup>17</sup> and the UN International Labour Organization (ILO).<sup>18</sup>

The ILO's navigation conventions have now been collected in a general maritime labour convention (no. 186), which was adopted in 2006.<sup>19</sup> The Maritime Labour Convention brought together all the conventions and recommendations adopted in the ILO since 1920 and covers every important aspect of working and living conditions on ships. This includes minimum ages, health requirements, employment services, employment agreements, the payment of wages, working hours and rest periods, holidays, homeward passage, cabins and leisure areas on board, catering, medical assistance, the responsibility

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<sup>16</sup> If a country can show that its continental shelf extends farther than 200 nautical miles from the coast, it can demand to have the economic zone extended.

<sup>17</sup> International Maritime Organization. Until 1982 the organization was called the Intergovernmental Maritime Consultative Organization (IMCO).

<sup>18</sup> The ILO is the UN organization for working life and comprises representatives for employers, workers and authorities.

<sup>19</sup> The convention does not apply to fishing or catcher vessels, warships, Royal Norwegian Navy support vessels or moveable installations in the petroleum business – St.prp. nr. 73 (2007–2008).

of shipping companies in case of illness or personal injury, requirements with regard to working environments and protection against occupational accidents, welfare systems in the ports and insurance schemes for medical care and for payments in case of illness or occupational injury.] (Kvinge and Ødegård, 2010)

The convention came into force in 2013. As of February 2014, it had been ratified by 56 countries. These countries account for 80 per cent of all freight carried globally.<sup>20</sup> The convention has been implemented in Norway through the Maritime Labour Act that came into force in 2013.

[In the convention, there is the requirement that any ship over 500 gross tonnes (GT) engaging in navigation internationally or between two foreign ports must have a certificate. The certificate is evidence that the flag state has conducted supervision and found the working and living conditions on board the ship to be consistent with the requirements of the convention.<sup>21</sup>

The ILO also draws up minimum standards for pay. The Joint Maritime Committee, an ILO body composed of shipowners' associations and the International Transport Workers' Federation (ITF), sets minimum wages,<sup>22</sup> and it is the ITF that has so far ensured that this regulatory framework is followed.<sup>23</sup> The Joint Maritime Committee's rates provide the basis for the compilation of the ITF's standards, which are considerably higher than those at which the committee initially arrived. For ships covered by collective agreements, the minimum wages are even higher. The basis for the collective agreements is dealt with on an international level, between the ITF and representatives of the employers' side – the so-called International Bargaining Forum (IBF). These framework agreements then provide the point of departure for national negotiations between the seamen's unions and employers' organizations in each individual country. The ITF has 130 inspectors all over the world who inspect arriving ships to ensure that the seafarers have pay, working and accommodation conditions that are in line with the international regulatory framework.

STCW 95 is the July 1995 revision (adopted by the IMO) of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. All persons in on-board positions subject to the obligation of certification must have certificates that have been updated in relation to the requirements of the revised STCW

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<sup>20</sup> Se [http://www.ilo.org/global/standards/maritime-labour-convention/news/WCMS\\_236264/lang-en/index.htm](http://www.ilo.org/global/standards/maritime-labour-convention/news/WCMS_236264/lang-en/index.htm)

<sup>21</sup> St.prp. nr. 73 (2007–2008).

<sup>22</sup> The ITF is a global amalgamation of trade unions within the transport sector. The ITF represents 4.6 million transport workers in 154 countries. There are 600,000 seafarers affiliated to the ITF (<http://www.itfglobal.org/about-us/moreabout.cfm>).

<sup>23</sup> When the new convention comes into force, this will be a task for national authorities such as Ship Control.

95 Convention. Certificates issued by or on the authority of a state that is not party to the STCW Convention shall not be recognized (Norwegian Maritime Directorate).

By ratifying (approving) a convention, states commit to complying with the convention and at the same time to accepting international supervision via the ILO's monitoring system (UNA Norway webpages).] (Kvinge and Ødegård, 2010)

## 4.2 EU regulations

[The plans to develop the EU's internal market put shipping on the EU agenda in earnest. Through the development of a common regulatory framework, the foundation was laid for the EU countries to coordinate their positions and their action in international shipping bodies, particularly in the IMO.

EU law is binding for the member states and overrides national law in the event of conflict. The EU has endorsed the UN Convention on the Law of the Sea and it thus becomes part of EU law by virtue of the fact that it takes precedence over any legal instruments violating the convention.

The point of departure for the regulations, then, is the EU's internal market with its fourfold freedom: the free movement of goods, services, labour and capital.

The free movement of labour is, as previously mentioned, one of the four fundamental rights within the EU's internal market, and it extends to seafarers too. Firstly it means the flag state cannot generally impose nationality requirements on seafarers.<sup>24</sup> This entails, secondly, that the flag state must treat seafarers from other member states in the same way as workers from the flag state (Björkholm 2007).

Numerous regulations have been compiled with which EU member states must comply. The following are among the central directives:

- The EU Directive on Port State Control (1995/21/EC), which gives states the opportunity to inspect vessels coming into port, including with regard to working and social conditions, is consistent with the international regulatory framework.
- Directive 2005/45/EC, which establishes, among other things, that member states must *as a matter of course* recognize STCW certificates issued by a member state to citizens and non-citizens of member states. Seafarers with

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<sup>24</sup> Exemptions from the nationality requirement can be made with regard to officers, for reasons including concerns for security.

such certificates shall be able to serve aboard ships flying any of the flags of the member states.

- Directive 2008/106/EC, which brings together the valid directives on minimum requirements for seafarers' levels of training. The Directive on the Mutual Recognition of Qualifications (2005/36/EC) regulates recourse to special national requirements.<sup>25</sup>
- The directive on the enforcement of and compliance with the ILO standards for working hours (1999/95/EC). This directive came into being as a result of an agreement between employers' and employees' organizations on the European level.<sup>26</sup>
- There is currently a proposal, under consideration in the EU's institutions, for a directive on the regulation of the conditions for employees aboard passenger ships and ferries sailing between EU countries.<sup>27</sup> (Kvinge and Ødegård, 2010)
- In 2009, the European industrial partners entered into an agreement concerning the implementation of the Maritime Labour Convention in EU legislation. The agreement has been implemented as EU law through Directive 2009/13/EC, and came into force at the same time as the convention.<sup>28</sup>

In addition to the free movement of labour, the free flow of services is of key importance for the regulation of wage levels and labour conditions for seafarers. The maritime service market was liberalized through the EU regulations of maritime cabotage, which were adopted in 1999. In Chapter 4.4 below we will discuss in more detail the implications of these regulations for Norwegian law.

### 4.3 Norwegian legislation

Norway has no statutory minimum wage. For many enterprises, collective agreements will impose limitations on the wage level that can be legally agreed. This applies only to the extent that enterprises are bound by such agreements. If the enterprise is not bound

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<sup>25</sup> Norway has special national requirements for ships' cooks, platform managers, stability section managers, control room operators, technical section leaders and assistant technical section leaders.

<sup>26</sup> The European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union.

<sup>27</sup> COM(00) 0437 Amended proposal for a directive on regulation of the conditions for employees on board passenger vessels and ferries operating between EU countries. <http://www.regjeringen.no/nb/sub/europaportalen/eos-og-efta/eos/aktuelt/rettsakter/> 6 January 2010.

<sup>28</sup> Directive 2009/13/EC of 16 February 2009 implementing the agreement concluded by the European Community Shipowner's Associations (ECSA) and the European Transport Worker's Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC.

by a collective agreement, there is no lower limit to the wage level that can be agreed. Citizens from countries outside the EU need a residence permit to engage in gainful employment in Norway, and such a permit is conditional on wage levels and labour conditions that are considered to be normal in the domestic labour market (see 4.2).

Payment of employees at a level below what is considered normal or common may be especially widespread in industries with a large proportion of foreign workers from countries where the wage level is far below that in Norway. Concerns that the EEA<sup>29</sup> Agreement would help establish this kind of competition spurred the adoption of an act on general application of collective agreements.<sup>30</sup> (Alsos & Ødegård 2008)

The Act relating to general application of collective agreements etc. came into force in 1994, and its objective is “to ensure foreign employees terms of wages and employment which are equalent to those of Norwegian employees, and to prevent distortion of competition detrimental to the the Norwegian labour market”.<sup>31</sup> In practice, this amounts to an introduction of a temporary statutory minimum wage in the industries and sectors involved. A generally applied collective agreement will cover all those who work within the agreement’s area of validity, irrespective of their nationality and type of employment.

Collective agreements that are being generally applied will comprise all employees irrespective of whether they are Norwegians or foreigners, as long as they are covered by the scope of the act and the decision. A decision to apply a collective agreement generally may also prevent distortion of competition to the disadvantage of the Norwegian labour market.

The Act on general application of wage agreements applies to workers on vessels and movable installations under the Norwegian flag, see Section 2, no. 2. The act does not apply to foreign vessels in cabotage traffic (domestic traffic) in Norway. The background for this restriction was the desire not to impose requirements for wage levels and labour conditions of crews on board foreign vessels.

“The Ministry deems it as somewhat irrelevant to impose restrictions on wage levels and labour conditions on board vessels under foreign flags that engage in domestic traffic along the Norwegian coast. Vessels under foreign flags have for many years engaged in transport between Norwegian ports. The EEA Agreement does not indicate any changes to this situation. Section 1, no. 2, first period, of the draft presumes that vessels under foreign flags engaging in Norwegian domestic traffic will

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<sup>29</sup> Norway is not a member of the EU, but takes part in the internal market through the EEA agreement between EU and the EFTA states. Generally speaking EU legislation that address the four freedoms has to be implemented into Norwegian law

<sup>30</sup> Act of 4 June 1993 no. 58 relating to general application of wage agreements etc.

<sup>31</sup> The Act’s statement of purpose was expanded in 2009, when the objective of preventing distortion of competition was included in the legislative text proper.

not be comprised by the Act.” (Ot.prp. nr. 26 (1992-93) p. 19.) (Translation from Norwegian)

In other words, today it is impossible to enact a general application of collective agreements that will have an effect on vessels under foreign flags. (Kvinge and Ødegård, 2010)

In the following we will look at the latitude that Norwegian authorities enjoy with regard to regulating wage levels and labour conditions on board EEA vessels engaged in cabotage traffic in Norwegian waters.

## **4.4 The EU cabotage regulations**

The EEA Agreement incorporates Norway into the EU’s internal market. The internal market also applies to the shipping industry, and the EU has adopted regulations intended to ensure that the four freedoms also apply to maritime transport of passengers and cargo.

The purpose of the EU regulation (EEC) 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) is to abolish obstacles to free maritime transport. The regulation was made applicable to Norway from 1998.<sup>32</sup> The cabotage regulations imply that EEA vessels can engage in domestic traffic in Norway, and that NOR vessels can engage in domestic traffic in other EEA states.

The general principle in international law is that the flag state has general jurisdiction over the vessel. This implies that the flag state has the right to adopt laws regulating the conditions on board.<sup>33</sup> On the territory of other states, however, certain restrictions apply. When vessels registered abroad ply territorial waters – cabotage traffic – the legislation of the host state will in principle apply. This implies that the vessels must comply with laws and regulations adopted by the coastal state. In other words, Norway can adopt laws that will apply to foreign vessels in cabotage traffic in Norway. However, with regard to vessels sailing under the flag of other EEA states, Norway has less latitude.

The content of the regulation is a compromise between the cabotage rules found in the different countries. Traditionally, Northern European countries have pursued a liberal practice for cabotage, while in Southern Europe this market was previously strictly

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<sup>32</sup> Act of 12 April 1992 no. 121 on the free exchange of services in maritime transport, Section 1, no. 3.

<sup>33</sup> See the UN Convention on the Law of the Sea of 1982, Article 9 ff.

regulated. As a result, the EU permitted maritime cabotage, but left the countries with an opportunity to enact national regulations for certain types of vessels and certain routes. Article 3 of the regulations states that:

- For vessels engaging in mainland cabotage and for cruise vessels of 650 gross register tonnes (GRT) or more, all questions relating to manning shall be regulated by the flag state.
- For ships smaller than 650 gross register tonnes, the member states may decide that all questions relating to manning shall be decided by the host state.
- For all vessels engaging in island cabotage, all questions relating to manning shall be decided by the host state.
- For cargo vessels larger than 650 GRT that engage in island cabotage and that immediately prior to or after this cabotage undertake a journey to another country, all questions relating to manning shall be decided by the flag state.

This implies that the national latitude depends on the following factors:

- A) What is meant by “all questions relating to manning”, and
- B) The type of cabotage in question and the size of the vessel.

#### **A) “All questions relating to manning”**

The cabotage regulations decide which state – the flag state or the host state – has the right to adopt laws for vessels in cabotage traffic. Article 3 deals with legislation for “all questions relating to manning”.<sup>34</sup> The question is, however, what this expression refers to. The interpretation of the EU Commission is recounted in an interpretation statement (COM 2003(595)). With reference to the latitude enjoyed by the host state regarding vessels under 650 GRT and in the case of island cabotage, the Commission states:

“The Regulation does not specify which ‘matters relating to manning’ are the responsibility of the host State. Some people claim the host State's competence is unlimited (the Regulation refers to ‘all’ manning rules). The Commission takes a more restrictive approach. It believes the host State's competence needs to be limited in order to safeguard the principle of freedom to provide services, in respect of which that competence is a derogation. (...) In terms of working conditions, they may impose the minimum wage rules in force in the country.” (pt. 4.1)

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<sup>34</sup> The English translation of the regulations uses “all matters relating to manning”, while the French text says “toutes les questions relatives à l'équipage”. The German translation uses “alle Fragen im Zusammenhang mit der Besatzung”.

In other words, the Commission states that the fundamental issue is the free exchange of services, and that Article 3 regulates an exception from this rule.<sup>35</sup> Moreover, it is made clear that minimum wage regulations can be included in the expression “questions relating to manning”. This may mean that in the Commission’s opinion the host countries have no authority to determine minimum wages for vessels larger than 650 GRT, unless these are engaged in island cabotage.<sup>36</sup> For smaller vessels, however, the host countries may regulate minimum wages. It remains uncertain whether the regulation should be interpreted in this way, and there are no legal precedents in this area. As we will see below, the EU countries have interpreted this regulation in various ways.

Another question is whether Norway may introduce such restrictions on domestic maritime traffic that were not there prior to the incorporation of the regulations into Norwegian legislation. The decision of the EEA Committee to incorporate the regulation in Article 1 b of the EEA Agreement says:<sup>37</sup>

Unless otherwise determined by this Agreement, the partners will refrain from introducing new restrictions on the access to provide services that has been achieved on the day the EEA Committee decides to incorporate this regulation into the Agreement.

This can be interpreted as saying that Norway cannot introduce restrictions on maritime cabotage other than those that were in force in 1997. This issue was also on the agenda when the amendments to the Vocational Transport Act<sup>38</sup> were deliberated in 2009. The issue was whether the decision of the EEA Committee was an obstacle to expanding the employees’ rights in the context of sales of enterprises. At the time, the Government stated:

“On the other hand, it can be claimed that legal developments within the EEA are proceeding towards increasing acceptance of ensuring employees’ rights, cf. for example Article 4 (5) in the regulation of public transport referred to above and the possibility of applying the regulation also to maritime transport.

In addition, the Ministry of Transport and Communications points out that even though Directive 2001/23/EF on transfers of undertakings does not apply to maritime transport, cf. Article 3 of the directive, many of the EU Member States

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<sup>35</sup> This could be interpreted as saying that if the wage levels were not comprised by “all questions relating to manning”, it would in consequence be the prerogative of the flag state.

<sup>36</sup> And not in the immediate context of a journey to another country.

<sup>37</sup> Decision no. 70/97 of 4 October 1997 on amendment of appendix XIII to the EEA Agreement (Transport).

<sup>38</sup> Act of 21 June 2002 no. 45 relating to vocational transport with motor vehicles and vessels.



nevertheless apply the rules for transfers of undertakings to maritime transport. See item 3, *litra e*, in the report COM(2007)591 final from the Commission. If there are no obstacles to letting the rules for transfers of undertakings apply to ocean-going vessels in general, there is less indication that the maritime cabotage regulations represent a restriction with regard to letting the rules for transfers of undertakings apply to competition for contracts in maritime transport.

The Ministry of Transport and Communications finds it equally important to safeguard the rights of employees in the maritime transport sector as in the road and rail sector. With regard to the employees, real concerns indicate that the same rules should apply to maritime public transport as to the other transport sectors.

On the basis of general legal developments within the EEA in particular, the Ministry of Transport and Communications is of the opinion that introducing the rules for transfers of undertakings in the maritime transport sector will not constitute a violation of EEA legislation.” (Ot.prp. nr. 60 (2008-2009) pt. 3.2.2) (Translated from Norwegian)

Thus, the Ministry of Transport and Communications claimed that the EEA Agreement was no obstacle to an expansion of the employees’ rights. The majority of the Parliament’s (Stortinget’s) Standing Committee on Transport and Communications supported the Government’s interpretation of EEA law. If a corresponding interpretation is assumed with regard to general application of collective agreements, the decision by the EEA Committee will not be an obstacle to the introduction of restrictions on maritime cabotage larger than those that were in force in 1997.

## **B) What types of cabotage are regulated by this provision?**

The regulations distinguish between mainland and island cabotage. The national latitude is larger for island cabotage, since this involves no restrictions regarding the size of vessels (unless the vessel immediately prior to or after this cabotage undertakes a journey to another country). The question then is what is considered island cabotage. The regulations provide no exhaustive answer. Article 2, no. 1 *litra c*, defines island cabotage as “the carriage of passengers or goods by sea between

- ports situated on the mainland and on one or more of the islands of one and the same Member State,
- ports situated on islands of one and the same Member State.”

In its interpretation, however, the Commission states that island cabotage also comprises fjord crossings where a detour by road will involve a distance of 100 kilometres or more. The background is that areas can be isolated from each other in

ways similar to that of islands. This is stated with reference to Article 4, no. 1, which deals with public procurement, but will have general application.<sup>39</sup>

*A summary of the national latitude* with regard to the cabotage regulations is that the Act on general application of collective agreements can be amended to apply also to vessels registered under a flag other than the Norwegian. It appears, however, that potential decisions on general application of collective agreements cannot be made applicable to:

- EEA vessels with a tonnage of 650 GRT and above engaging in mainland cabotage in Norway. In this context, mainland cabotage refers to freight of passengers and/or cargo between ports on the Norwegian mainland (with the exception of fjord crossings where a detour by road would involve a distance of 100 kilometres or more).
- EEA vessels with a tonnage of 650 GRT and above engaging in island cabotage and where the vessels immediately prior to or after this cabotage undertake a journey to another country. Journeys to other countries may also include ballast-only trips.
- The cabotage regulations apply only to EEA vessels – for ships with a flag from a non-EEA state, Norway is free to introduce other regulations.

In addition, the regulations provide an opportunity to restrict cabotage “in case of serious disruption of the national transport market caused by the liberalization of cabotage” (Article 5). As regards Norway, such a decision could be made by ESA. In emergency situations, the countries may enact temporary measures with a duration of no more than three months.

### **About the continental shelf in particular**

We have only examined the Norwegian latitude with regard to transport between Norwegian ports on the mainland as well as island cabotage. However, a considerable amount of transport also takes place from ports on the mainland to installations on the continental shelf. This form of transport has a special status. In principle, the EEA Agreement does not apply to the activity on the Norwegian continental shelf.<sup>40</sup> However, the cabotage regulations define the concept of “maritime cabotage”. According to this definition, this concept includes offshore supply services. This is in turn defined as “the carriage of passengers or goods by sea between any port in a Member State and installations or structures situated on the continental shelf of that

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<sup>39</sup> This is the premise also for Ot.prp. nr. 60 (2008-2009).

<sup>40</sup> The geographic area of application of the EEA Agreement is defined in Article 126. The EEA Agreement applies on the territory of the Kingdom of Norway. Svalbard is exempt from the EEA Agreement. Norway presumes that the concept of territory should be interpreted in accordance with established practice in international law. This means that the EEA Agreement applies to Norway’s land territory, internal waters and territorial waters, but not to its economic zone, continental shelf or the open ocean. The geographical area of application is not regarded as a legal obstacle if Norway wishes to assume specific EEA obligations outside this territory on the basis of a specific assessment (Meld. St. 5 (2012-2013) pkt. 5.3.1).

Member State” (Article 1, litra b). In other words, the regulations also apply to transport to installations on the Norwegian continental shelf. Issues pertaining to the continental shelf do not appear to have been deliberated in particular in the context of the Norwegian approval of the incorporation of the regulations in the EEA Agreement.

Article 3 of the regulations defines the latitude that the states have with regard to “questions relating to manning” (see above). The article makes no special reference to offshore supply services. The question is what consequences this will entail. The most immediate interpretation is that this type of maritime transport has not been liberalized.<sup>41</sup> In any case, Norway could argue that offshore supply services are not included in the EEA Agreement. The national latitude will then depend on principles of international law. These principles state that the rules of the flag state will apply in international waters. Transport to offshore installations often passes through international waters, and the rules of international law may thus indicate that there is limited latitude for action.

## 4.5 The Immigration Act

Workers from third countries (outside the EEA area) need a residence permit to engage in gainful employment in Norway.<sup>42</sup> The requirement for a residence permit applies also to foreign vessels in domestic traffic. While this type of residence permit is normally restricted to specialists that are in short supply in Norway, a general exemption has been granted to foreign seamen who work on board vessels registered abroad. These may obtain a residence permit, in spite of not being specialists. The condition for such a permit is that their wage levels and labour conditions are not poorer than in the applicable collective agreement or industry pay scale. “If no such collective agreement or pay scale is available, the wage levels and labour conditions should not be inferior to what is normal for the location and profession in question” (Section 23).

Some seamen are completely exempt from the requirement for a residence permit. This applies to seamen who work on board cruise vessels registered abroad or vessels registered in an EEA country.<sup>43</sup> In addition, exemptions are granted to seamen covered by certain bilateral shipping agreements. Agreements are in force for the Faroe Islands, Argentina, the USA and Peru.<sup>44</sup>

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<sup>41</sup> Ruling C-251/04 *Hellenic Republic* of the EU Court of Justice indicates the same. The case did in fact concern a type of service that was in no way comprised by the regulations, and the court ruled that national regulations would apply.

<sup>42</sup> See Section 23 of the Immigration Act of 15 May 2008 no 35.

<sup>43</sup> See Section 1-1, sixth paragraph, of the Immigration Regulations of 15 October 2009 no. 1286.

<sup>44</sup> See Appendix 1 of the Immigration Regulations.

## 4.6 Governmental subsidy schemes

[In order to “safeguard Norwegian maritime competence and the recruitment of Norwegian seafarers, as well as to help Norwegian shipping companies to enjoy conditions that are competitive in comparison to the conditions in other countries”, the state gives subsidies to shipping companies for seafarers aboard Norwegian-registered ships covered by the Seamen’s Act.<sup>45</sup> There are two public subsidy schemes:

1) A scheme for refunding a percentage share of the shipping company’s wage costs for certain groups of seafarers on the ships in question. The ships must be registered in NIS or NOR. ‘Wage costs’ means gross wages paid to the seafarers. As of today, this refund scheme involves a 12 per cent refund of the wage costs for cargo ships, passenger ships and tugs not engaging in petroleum operations. A refund of 9.3 per cent is given for well boats and ships in the petroleum business.

2) A net wage scheme that involves a shipping company receiving refunds corresponding to the sum of paid income tax, social security contributions and employer contributions for crews under the scheme. The net wage scheme extends to:

- crews comprised by the vessels’ alarm instructions on NOR-registered passenger ships (ferries) in foreign trade,
- NOR-registered ships engaging in petroleum operations (offshore vessels),
- other vessels in NOR (cargo ships, well boats, passenger ships and tugs),
- minimum safe crews on the coastal steamers serving the route between Bergen and Kirkenes.

The payable reimbursement must be within the EU/EEA regulations for government subsidies.<sup>46</sup> The net wage scheme functions so that the shipping company withholds income and payroll taxes in the ordinary manner, and transfers these funds to the Norwegian Maritime Authority. Subsequently, the shipping company sends a request to the authority for reimbursement of the taxes and fees paid. Thereby, the shipping companies’ wage costs are in practice far lower than what they otherwise would have been, while the seamen receive their regular net wages. According to the Norwegian Association of Cargo Freighters (FR), the scheme is highly important for enabling shipping companies that wish to retain Norwegian seamen on their cargo vessels to compete with vessels registered in other countries (i.e. not included in the scheme). Today, the shipping companies have numerous officers who have “learned the ropes”

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<sup>45</sup> See FOR 2005-12-21 nr 1720: Forskrift om forvaltning av tilskudd til sysselsetting av sjøfolk (Regulations on the administration of subsidies for employment of seamen).

<sup>46</sup> The Norwegian Seamen’s Association has supplied us with information stating that net-wage schemes are in effect in Denmark, Finland, France, Greece, Italy, the Netherlands, UK, Sweden and Germany. In this report we have been unable to provide a closer description of these schemes.

through on-board training. This is regarded as a positive feature compared to having all training take place in institutions. The Norwegian Association of Cargo Freighters is therefore concerned with preventing the net-wage scheme from being amended to apply only to officers.

Seafarers who are residents of Norway or other EEA countries and are liable to pay tax or social security contributions to Norway are regarded as seamen eligible for refunds. For seafarers to be entitled to refunds, there is the requirement that pay and working conditions must be covered by a collective agreement with the seamen's unions.<sup>47</sup> A refund limit of NOK 198,000 per employee per year was introduced with effect from 1 July 2008.<sup>48</sup> (Kvinge and Ødegård, 2010)

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<sup>47</sup> A key condition of joining the net wage scheme is that a shipping company take part in training measures for seafarers. This happens by means of payments to the Norwegian Maritime Competence Foundation, which issues subsidies for training positions and health, safety and environmental measures. The foundation collects moneys and administers it in a fund into which the shipping companies covered by the net wage scheme are obliged to make payments. The money must be used for competence-raising measures and recruitment drives in the maritime industries.

<sup>48</sup> <http://www.sdir.no/no/Sjofolk/Refusjonsordningene/>; <http://www.regjeringen.no/nb/dep/nhd/dok/regpubl/stprp/2008-2009/stprp-nr-1-20082009-/7/2/18.html?id=530237>.

## **5 Regulation of wages and labour conditions in maritime cabotage in other countries**

In this chapter we will examine how other countries have regulated maritime cabotage. We will primarily look at regulations pertaining to the crew, including wages and labour conditions. The purpose of this review is to investigate whether other countries have enacted restrictions on the opportunities of foreign ships to engage in maritime cabotage. The review focuses on states that traditionally have had major fleets and comprises EU Member States as well as third-states. We have also investigated the implications of the EU cabotage regulations for national provisions for the EU states.

The investigation was undertaken by asking researchers/research institutions in the selected countries to respond to a number of specific questions regarding the regulation of cabotage (see Appendix 1). We will refer to a major proportion of this material. By way of conclusion we will provide a summary of the data that have been collected.

### **Cabotage regulations in third-party states**

[The ITF has identified at least thirty seafaring nations in the world (excluding Europe) that apply regulatory frameworks of various kinds to cabotage in order to protect their own shipbuilding, their own shipowners or local seafarers. The regulations vary a great deal, and discriminatory cabotage regulations are most conspicuous in North, South and Central America and South, East and South-East Asia.

Though many countries have cabotage regulations that favour their own shipping companies and seafarers, very few have big enough fleets of their own to provide all domestic transport services. In particular, there is the matter here of sufficient availability of supply vessels in the offshore sector, tankers, seismic research vessels and the like. Thus exceptions may be made now and then, for example when foreign-registered ships obtain temporary permits to engage in cabotage traffic. A few countries establish separate registers for foreign-controlled ships that have temporary permits to engage in cabotage.] (Kvinge and Ødegård, 2010)

## 5.1 Sweden

### Legal frameworks

The main principle in Swedish law is that all workers should be comprised by the same set of regulations, irrespective of their profession and tasks. In some areas, introduction of special legislation has been deemed necessary, such as for work on board vessels. For work on board Swedish vessels the Seamen's Act (1973:282) and the Act relating to rest periods for seamen (1998:958) apply. However, the provisions in these acts are restricted in their application to work on board Swedish vessels, with the exception of Section 7a of the Act relating to rest periods. With regard to other working conditions, general labour law will apply, such as the Employment Protection Act (1982:80) and the Employment (Co-Determination in the Workplace) Act (1976:580). Provisions on the working environment on board are found in the Act relating to safety of vessels (2003:364) as well as in the Working Environment Act (1977:1160). In principle, the provisions on the working environment apply to Swedish as well as foreign vessels operating inside Swedish maritime territory. The working environment provisions have nevertheless been applied to foreign vessels to only a minor extent. The following table (5.1) shows the structure of the applicable regulations:

Table 5.1 Structure of Swedish regulations with regard to their applicability to foreign vessels

Act	Regulatory scope	Area of application	Comments
Seamen's Act (1973:282)	Certain special provisions on employment contracts and positions on board vessels, provisions on establishment of vessel committees.	Swedish vessels	
Act relating to rest periods for seamen (1998:958)	Working hours during on-board service.	Primarily Swedish vessels	Section 7 a applies to staff on board foreign vessels calling on Swedish ports.
Employment Protection Act (1982:80)	Provisions on forms of employment, relocation and termination.	Primarily Swedish vessels	
Employment (Co-Determination in the Workplace) Act (1976:580)	Co-determination negotiations, collective agreements and industrial disputes.	Primarily Swedish vessels	
The Safety of Vessels Act (2003:364)	Provisions on maritime safety and on-board working environment.	Swedish vessels and foreign vessels used for shipping in Swedish maritime territory	The working environment provisions in Chapter 4, Sections 3 and 4, as well as Section 5, first and second paragraph, apply to foreign vessels in Swedish maritime territory.
Working Environment Act (1977:1160)	General provisions on the working environment.	Swedish vessels	
Food Act (2006:804)	Handling of food on board.	Swedish vessels	

### **Maritime safety and working environment regulations**

In Sweden, wage levels and working conditions are regulated exclusively through collective agreements. Sweden has no statutory minimum wage. The key collective agreement in this area is the so-called Storsjö Agreement (Storsjöavtalet). As a rule, this collective agreement applies only to employees of shipping companies that are members of the Swedish Shipowners' Employer Association. Vessels owned by foreign shipping companies with foreign crews on board are outside the area of application for this collective agreement.

Freight vessels sailing in international traffic under a Swedish flag are also encompassed by the so-called TAP agreement (Tillfälligt anställd personal – Temporary employed personnel). This agreement permits shipping companies to have a certain number of foreign seamen on board, hired on local, i.e. non-Swedish, conditions. The TAP agreement thus functions as a sort of substitute for an open Swedish register by enabling Swedish vessels to compete to some extent in the international market.

### **Wage levels and working conditions on board foreign vessels**

Swedish trade unions may request a separate collective agreement with foreign shipping companies that operate vessels calling at Swedish ports. If the shipping company refuses, the vessels may be put under blockade. In such cases it is immaterial whether a foreign collective agreement exists between the shipping company and the foreign crew's trade union (see Sections 25a and 42a of the Employment Co-Determination Act). On occasions, the Swedish trade unions have used this opportunity for blockades quite frequently, not least within the framework of the ITF (International Transport Workers' Federation) campaign against vessels under flags of convenience. The perhaps most notorious case occurred in 1990 and involved the Black Prince ferry, with a partly Filipino crew on board. The ferry was intended for traffic between Denmark, Norway and Sweden (Gothenburg). The Swedish seamen's association put the ferry under blockade and succeeded in driving it out of this market.

Even though the number of blockades within the framework of the ITF campaign has been reduced, Swedish trade unions are likely to take further industrial action against a vessel operating in Swedish domestic traffic if the foreign shipping company refuses to sign a collective agreement (subsidiary to the Storsjö Agreement). Trade unions are likely to regard competition on the basis of low-pay crews in the Swedish cabotage market as a form of disloyal competition.

One question that arises in this context is whether such industrial action can be regarded as a violation of prevailing EU legislation if it targets a vessel registered in another EU country. It should be borne in mind that work on board vessels is not encompassed by the so-called Posting of Workers Directive. This directive permits employers in other member states to post workers to a host country, partly under those employment conditions that apply in the posting country. Nor can this be prevented by the



provisions in the cabotage regulations (3577/92) stating that the conditions on board should be governed by the laws of the flag state, since the collective agreement concluded with the shipping company can be regarded as part of the regulations of the flag state (the collective agreement concluded with the foreign shipping company is intended to apply on board the foreign vessel only). This applies for as long as none of the fundamental principles of the treaty are being disregarded. For example, if Swedish organizations set out to require that a ship is reflagged to Sweden, there is a risk of violating the principle of a free and open market, cf. the verdict of the EU Court of Justice in the so-called Viking Line case (C-485/05). The court ruled that a blockade initiated by the Finnish seamen's association against the Viking Line shipping company to prevent a reflagging of a vessel to Estonia was in contravention of the freedom of establishment.

## 5.2 Denmark

### Legal frameworks

Labour conditions for seamen on board foreign ships operating in Denmark are regulated by international conventions. Denmark has ratified the Maritime Labour Convention 2006, which has been incorporated into Danish maritime legislation since August 2013.

The Danish Seamen's Act (Sømandsloven) helps regulate labour conditions for seamen, and applies to all staff on board Danish vessels. An English version of this act can be found on the website of the Danish Maritime Authority (DMA).<sup>49</sup>

Denmark has two ship registers: the Danish Ship Register (Skibsregisteret) and the Danish International Ship Register (DIS). Vessels registered in DIS are not permitted to engage in cabotage.

### Main content of the regulations

Denmark has no statutory regulations for wages, which are invariably determined through negotiations between the social partners. The wage conditions for seamen are regulated by a variety of different collective agreements.

If the foreign vessels sail between Danish ports only, a trade union may require a collective agreement with the foreign shipping company. This has happened on one

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<sup>49</sup> <http://www.dma.dk/Legislation/Sider/Acts.aspx> and <http://www.dma.dk/Manning/Sider/Conditionsofemploymentandsocialsecurity.aspx>

occasion, with a German passenger ship that operated between Danish ports. Establishing a collective agreement is thus an opportunity, even though it is used only rarely.

According to the DIS Act, the wage rates in the collective agreements are valid only for Danish vessels or foreign vessels registered in Denmark. Moreover, the wage rates apply only to seamen who are residents in Denmark or those who are given equal treatment to them by force of EU legislation or other international agreements. This means that there is no requirement for minimum wages to seamen on board vessels registered abroad, nor will Danish collective agreements apply to seamen from countries outside the EU.

### **To whom do the regulations apply?**

According to the DIS Act, seamen from third countries may work on Danish vessels with wage levels and labour conditions based on applicable rules in their home country. Seamen from non-EU countries who work on board Danish vessels are encompassed by Danish collective agreements only if they are residents in Denmark.

Seamen from third countries need a residence permit to work on board Danish vessels that only operate within Danish territorial waters. On the other hand, no residence permit is required for seamen on vessels that operate in international waters.

### **Measures to ensure equal conditions in domestic traffic**

Today, seamen on board Danish vessels do not enjoy equal wage levels and labour conditions. This situation has been criticized by the trade unions, but the opportunities to ensure equal conditions for all seamen are restricted by the DIS Act, which states that foreign seamen cannot be encompassed by a collective agreement negotiated by a Danish trade union, even when the foreign seaman is a member of that trade union. Ensuring equal wage levels and labour conditions will therefore depend on an amendment to the DIS Act.

### **Laws and subsidies protecting against foreign competition**

Since 2002, a tonnage-based tax regime has been in operation for shipping companies that are registered or resident in Denmark and have vessels registered in the ordinary ship register. This tax plan permits shipping companies to pay taxes according to their total tonnage as an alternative to the regular 25 per cent enterprise tax. The tonnage scheme is part of a more comprehensive financial framework established to increase the attractiveness of registering vessels in Denmark and to counteract reflagging.

In addition, Danish seamen are entitled to tax exemptions. As a result, collective agreements can define wage rates equal to net wages. This means that the amount

representing the tax exemption for the Danish seamen does not function as a tax relief for the workers themselves, but as a governmental subsidy to the shipping companies.

This tax exemption serves a dual purpose: 1) to ensure Danish employment by strengthening the competitiveness of the seamen, and 2) to reinforce the competitiveness of Danish shipping companies.

While the DIS Act helps increase the competitiveness of Danish shipping companies, it has been criticized for its effect on the competitive conditions for Danish seamen. The act permits the shipping companies to employ third-country citizens on wage conditions prevailing in their country of residence. Normally, these are less favourable than Danish wages, even when the tax benefit is taken into account. The regulations thus provide an incentive for hiring third-country citizens.

## 5.3 France

### Legal frameworks

The EU Council regulation (3577/92) was implemented as Decret no. 99-196 on 16 March 1999.<sup>50</sup> The regulation applies to (1) vessels engaging in mainland cabotage and cruise vessels of less than 650 GRT, (2) vessels engaging in island cabotage, with the exception of freight vessels larger than 650 GRT engaging in island cabotage when the voyage in question immediately precedes or follows a voyage to another state. The limit of 650 GRT applies to vessels engaging in mainland cabotage as well as cruise vessels. On vessels engaging in mainland cabotage and on cruise vessels, all issues pertaining to the crew should be the responsibility of the state in which the vessel is registered (the flag state), with the exception of vessels smaller than 650 GRT, for which the conditions of the host state apply. In other words, this is a verbatim implementation of the EU regulation (Article 3). The provision was adopted on the day before the Italian shipping company Corsica Ferries launched a regular cabotage service on the French coast.<sup>51</sup>

In 2013, the French government decided to reinforce prevailing legislation and submitted a parliamentary bill.<sup>52</sup> The bill was adopted by the national assembly on 29 May 2013.<sup>53</sup> The government claimed that the existing provisions were insufficiently

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<sup>50</sup> Relatif à l'application des conditions de l'Etat d'accueil conformément au règlement (CEE) du Conseil no 3577/92 du 7 décembre 1992 concernant l'application du principe de la libre circulation des services aux transports maritimes à l'intérieur des Etats membres (cabotage maritime)

<sup>51</sup> Le Marin, 21 January 2013.

<sup>52</sup> Projet de loi – dispositions en matière d'infrastructures et de services de transports

<sup>53</sup> Loi n°2013-431 du 29. mai 2013 portant diverses dispositions en matière d'infrastructures et services de transports

specific. Nor did the provisions take into account all on-board staff; the service personnel, for example, were not encompassed by them. The parliamentary bill was submitted with reference to concerns for “ensuring fair competition between French and foreign shipping companies that operate vessels in cabotage or provide services in internal waters”. The bill applied to all members of the crew on board, irrespective of their nationality. The law includes provisions on social regulations in maritime transport and reinforces the principle that vessels operating in cabotage in France must respect French social legislation.

### **Main content of the regulations**

According to the Transport Code,<sup>54</sup> seamen working on foreign vessels are encompassed by the same legislation and collective agreements that apply to seamen employed by French enterprises. This includes the following conditions:

- Fundamental individual and collective rights
- Discrimination and equal opportunities for men and women
- Protection of maternity, maternity/paternity leave and other family leave
- Rules applicable to temporary employment
- Exercise of the right to go on strike
- Working hours, compensating rest periods, national holidays, annual paid holiday, working hours and night work for young employees
- Minimum wages and payment of wages, including overtime bonus
- Rules for health and safety in the workplace, minimum age of employment and child labour
- Illegal work

The contract with the employee must identify the collective agreement that governs the employment relationship, meaning the agreement that applies to French vessels operating similar routes. In France, there are several collective agreements for sea transport:

- Collective agreement for seamen of 30 November 1950,<sup>55</sup> which applies to all vessels smaller than 250 GRT. This collective agreement has been made generally applicable, and thus applies to all employees and employers.
- Collective agreement for officers of 30 September 1948.<sup>56</sup> This agreement was

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<sup>54</sup> Article L. 5562-1 of the Transport Code.

<sup>55</sup> Convention collective nationale des personnels navigants d'exécution, du 30 novembre 1950.

<sup>56</sup> Convention collective national officiers du 30 septembre 1948.

revised by the social partners in 2013,<sup>57</sup> and will be made generally applicable.<sup>58</sup>

The law also names the documents that must be available for inspection by national authorities (such as the seamen's registrations of working hours and rest periods, documentation of wage payments etc.) and applicable sanctions in case of contraventions.

### **Statutory minimum wages or generally applicable collective agreements**

France has a statutory minimum wage that applies to all employees. The collective agreements define separate minimum wage levels. Since these have been made generally applicable, they will apply to all labour relationships in the sector. The agreements stipulate minimum wage rates that are at least on the level of the statutory minimum.

As noted above, the French regulations are linked to the EU regulations. They will therefore not apply to foreign vessels larger than 650 GRT that engage in mainland cabotage. The rules of the flag state will apply to these.

### **Third-country vessels**

The French regulations apply irrespectively of whether the vessel is registered in the EU or in a third country, since the vessels in any case will come under the Transport Code.

Employees from third countries may be hired on board French vessels. In such cases they are likely to need a work permit.

### **Views of the organizations and others**

The national labour organization CGT has accepted the Act of May 2013, even though they attempted to establish by statute that mainland transport and transport to islands could only be undertaken by French vessels. On 11 April 2013, the CGT went on strike to achieve such a rule.<sup>59</sup> As a result of this legal amendment, Corsica Ferries, which operates between the mainland and the island of Corsica, will be forced to hire seamen on French labour contracts and subject to the same social legislation. This is regarded as a departure from the low-cost model, and according to the CGT, it will reintroduce fair competition with the French enterprise SNCM which today is on the brink of bankruptcy.

Protection of the French fleet has also been on the political agenda. In October 2012, the Communist group in the Senate presented a parliamentary bill that would require all

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<sup>57</sup> The employer association "Armateurs de France<sup>57</sup>" and five trade unions (CFTC, CFE-CGC, CFDT, FO and CGT).

<sup>58</sup> Avis d'extension du 5 octobre 2013.

<sup>59</sup> Le Marin, "La CGT appelle l'ensemble des marins à 24 heures de grève le 11 avril", 5 April 2013.

cabotage to be undertaken by vessels under the French flag, a move that would violate EU legislation.<sup>60</sup>

## 5.4 Italy

### Legal frameworks

Maritime cabotage is primarily regulated through the *Codice della navigazione*, Article 224, Section 2.<sup>61</sup>

According to this act, cabotage services in Italian ports must comply with EU regulation no. 3577/1992 of 7 December 1992 (Maritime cabotage). The opportunity to engage in cabotage is restricted to shipowners who are European citizens using vessels registered in an EU country. There is a certain opportunity for vessels registered in the Italian international ship register to engage in cabotage, but this opportunity is restricted to vessels larger than 650 GRT. The act imposes restrictions on how frequently such vessels may travel between domestic ports and whether this must occur in the context of a journey to another state.

### Minimum-wage regulations

The ILO Maritime Labour Convention (MLC) from 2006 regulates minimum wages and labour conditions for seamen. In 2013, the Italian parliament adopted the law and ratified the ILO MLC. The Italian state port authority will monitor compliance with the convention, starting from November 2014.

In addition to the minimum standards defined by the MLC of 2006, national collective agreements may establish conditions that are more favourable. There are several collective agreements, for example for seamen employed on board vessels with a tonnage from 151 to 300 GRT or more than 500 GRT. The collective agreement signed by the most representative partners<sup>62</sup> defines a range of wage levels according to vocational skill levels and the size of vessels.

Wages are defined by the country in which the vessel is registered, i.e. under whose flag the vessel is sailing, with the exception of vessels smaller than 650 GRT and vessels engaging in island cabotage. In these cases, national regulations apply in conformity with EU regulation no. 3577/1992. Minimum wages for foreign employees on board vessels in the international register sailing under the Italian flag are regulated by a national

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<sup>60</sup> Le Marin, «Le Sénat examine une proposition de loi sur fond de grève», 16 October 2012.

<sup>61</sup> The law was adopted by royal decree no. 327 on the 30 March 1942.

<sup>62</sup> The employer association Confindustria and the trade unions Filt-Cgil, Fit-CISL, Uil Trasporti.

agreement. There is no requirement for minimum wages for seamen on board vessels that are registered abroad and engaging in domestic traffic.

As regards employees on vessels engaging in inter-island cabotage, a ministerial directive specifies that the employees must be European citizens and that their labour contracts must comply with a nationwide Italian collective agreement. Third-country citizens are barred from sailing in cabotage traffic in Italy.

### **Different ship registers**

In Italy, vessels are classified in three registers, two of which are national. The third, and international, ship register was established by Act no. 30 of 27 February 1998 to register all vessels that engage exclusively in international trade. Act no. 30/1998 introduced an opportunity for the social partners to endorse agreements that define other conditions for those employed in cabotage traffic. Nearly all large ferries, which account for the majority of the vessels engaging in cabotage, make use of this opportunity for vessels registered in the international register. These vessels thus have a competitive advantage over those registered in the EU.

### **Governmental subsidies**

Italy has introduced governmental contributions to vessels registered in the international register. For these, the government pays the social contributions for seamen, and the shipping companies receive tax relief.

### **Views of the social partners and others**

Maritime unions in Italy are engaged in an ongoing dialogue, including the main federations at the national level,<sup>63</sup> as well as the international transport workers' federation (ITF) and the European transport workers' federation (ETF) at the international level. The trade unions undertake continuous lobbying of the ITF, which defines minimum labour conditions for seamen working on vessels where the ITF agreement applies.<sup>64</sup>

There is no ongoing debate between the trade unions and the employers' associations regarding wage levels and labour conditions for seamen on vessels sailing under foreign flags.

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<sup>63</sup> Filt-Cgil, Fit-CISL, UilTrasporti.

<sup>64</sup> For example, according to the ILO MLC, the minimum wage for an Able Seaman (AB) is about \$800, compared to \$1,804 foreseen by ITF collective agreements. However, maritime workers' costs remain high: for instance, the overall monthly cost of an Italian maritime worker is € 5,400, as foreseen by the national collective agreement. Without state aid, the cost differential with other EU countries' maritime workers would remain high, which would partly explain why shipowners tend to hire non-EU maritime workers.

For the moment, the main interest of the trade unions appears to be in strengthening preventive efforts such as monitoring and control with a view to combating violations of European cabotage regulations and safeguarding the interests of the employees. In addition, trade unions engage in lobbying to attempt to create job opportunities for Italian workers on vessels operating inter-island cabotage.

## 5.5 Spain

### Legal frameworks

Wage levels and labour conditions, including maritime labour, are regulated by various Spanish acts. The fundamental regulation in the field of labour law in Spanish jurisprudence is the Employee Act of 1995.<sup>65</sup> Spain has ratified a number of ILO conventions, including the MLC of 2006.<sup>66</sup>

### Main content of the regulations

The general principle in Spanish labour law is that agreements concerning labour conditions are to be entered into by employers and employees. Both parties must respect statutory regulations. In addition, the employers' associations and the trade unions sign collective agreements. These agreements may include wage structures, calculations and payments, while Spanish law defines a mandatory minimum wage. Currently, the Spanish minimum wage amounts to EUR 21.45 per working day or EUR 645.30 per month.<sup>67</sup>

The minimum wage regulations also apply to seamen employed in the merchant fleet. In other respects, labour on board Spanish merchant vessels is encompassed by an arbitration award passed by the Spanish ministry of employment and social security. The award was passed after unsuccessful attempts by the Spanish shipowners' association and the maritime trade unions to establish a collective agreement. The award defines the same minimum wage as the statutory level, and stipulates other conditions in the same way as regular collective agreements. The award also contains provisions on wage structure and payments.

The extent to which the above and other regulations apply to seamen on foreign vessels in domestic traffic (cabotage) is determined by the EU regulation on maritime cabotage. The

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<sup>65</sup> The act was originally adopted in 1980, but is currently embedded in the Real Decreto Legislativo 1/1995 of 24 March, in which a revised text was adopted. (Boletín Oficial del Estado - BOE no. 75, March 29, 1995, page 9654). BOE is a governmental announcement channel, where all Spanish legal provisions and regulatory instruments must be published before they enter into force.

<sup>66</sup> See the Ratification Instrument (in Spanish) in BOE no. 19, of January 22, 2013, at p. 2967.

<sup>67</sup> Real Decreto 1046/2013, de 27 de diciembre, por el que se fija el salario mínimo interprofesional para 2014 (BOE no. 312, December 30, 2013, at p. 106560).



rules are found in Royal Decree 1516/2007 (RD 1516) on determination of the legal basis for (a) maritime cabotage in regular service and (b) maritime services that are of public interest. The rules are also found in the already existing “Order of the Ministry of Infrastructure of 22 July 1992”, which defines manning requirements for vessels engaging in island cabotage.<sup>68</sup>

RD 1516 states that all cabotage presupposes registration with the authorities. Moreover, cabotage is reserved for vessels registered in Spain, the EU and EEA. In addition, stricter requirements are imposed on island cabotage. For this type of freight, all crew members must have wages that are at least equal to the Spanish minimum level. Island cabotage is also subject to an expanded set of rules, including regulations of manning.

### **To whom do the regulations apply?**

In addition to the requirement for minimum wages, the provision from 1999 regulates other issues pertaining to manning. The requirements apply to seamen working on board Spanish vessels, as well as to foreign vessels (i.e. ships registered in the EU or EEA) that are involved in the above services and routes. The requirements include:

- that the captain, the first mate and at least 50 per cent of the crew must be EU or EEA citizens,
- that the daily working hours and rest periods, as well as the annual holidays of the crew, are at least equal to those stated in legislation applicable to Spanish vessels operating the same services,<sup>69</sup>
- that the vessels must have minimum safety manning in accordance with criteria defined in the international convention on maritime safety, provided that the requirements for working hours and rest periods are being met, and
- that the crew members must have a social insurance scheme or be otherwise insured according to the following criteria:

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<sup>68</sup> Orden (Ministerio de Fomento) de 22 de julio de 1999, por la que se establecen las condiciones de tripulación para los buques que realicen servicios de cabotaje insular (BOE no. 182, July 31, 1999, at p. 28643), hereinafter the 1999 Order.

<sup>69</sup> Spanish legislation on working hours, rest periods and holiday time applicable to seafarers is set, under the general framework laid down in the Workers’ Statute, in the Real Decreto 1561/1995, de septiembre 21, sobre jornadas especiales de trabajo (BOE no. 230, September 26, 1995, p. 28606). This Royal Decree applies to several different types of work and professions, which includes work on board merchant marine vessels. Its provisions have been amended in this particular regard on different occasions, most recently for adjusting their content to EU Directives relating to the organization of working time of seafarers, and in particular through a Royal Decree specifically addressing work, rest and vacation time for seafarers (Real Decreto 285/2002, of March 22, sobre jornadas especiales de trabajo, en lo relativo al trabajo en el mar; BOE no. 82, April 5, 2002, at p. 15443).

- for seamen who are EU citizens:
  - o the crew must be covered by the social insurance scheme in their member state (EU/EEA).
  - o the social insurance scheme must cover workplace accidents, illness, maternity/paternity leave, old age and disability.
  
- for citizens of third countries:
  - o the insurance scheme or other arrangement must comprise at least the same issues as specified above, and provide the same degree of protection as is granted under Spanish law.

Spanish legislation also comprises laws and regulations of cabotage traffic adopted by the self-governing regions.<sup>70</sup> None of these regional laws define special requirements for manning, but refer to national rules (RD 1516 and the regulation from 1999).

In exceptional cases, the authorities may grant permission to engage in cabotage to vessels under third-country flags. In such cases, the same rules as for EU/EEA vessels will apply with regard to manning.

### **EU Regulation 3577/92**

Regulation 3577/92 has been implemented in Spain through royal decree RD 1516 and the regulation from 1999. The provisions have caused a change in the existing regulation of and access to the market for maritime cabotage services, which was previously reserved for domestic enterprises and vessels. Although EU and EEA shipping companies and vessels are free to engage in cabotage, they are subject to an obligation to communicate with Spanish authorities.

### **Are there any differences for EU/EEA and non-EU/EEA seamen?**

There are no differences in the requirements that apply to seamen employed on vessels with an EU/EEA flag and third-country citizens, as long as they possess the same right to social security.

Preconditions for granting residence and work permits to seamen from non-EU countries providing services on board vessels under an EU or EEA flag are dependent on the legislation of the flag state. Seamen from third countries may work on board vessels

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<sup>70</sup> Within the legal framework for the political organization of Spain (the 1978 Constitution and the by-laws of the self-governing regions) and according to the distribution of administrative authority between the central government and the self-governing regions, maritime cabotage falls under the purview of self-government rule when the service is provided between two ports in the same self-governing region with no connection to other ports or locations outside the region.

registered in Spain, either in the regular Spanish register or in the special register for vessels serving the Canary Islands. Vessels registered in either one of these two registers may engage in maritime cabotage. In both cases, Spanish legislation specifies that at least 50 per cent of the crew, as well as the captain and the first mate, must be citizens of Spain or another EU/EEA state.<sup>71</sup> The regulations pertaining to immigration and employment of foreigners will apply for hiring third-country citizens on Spanish merchant vessels, and residence and work permits will be required. However, the rules have been relaxed for third-country citizens working on vessels in the special register for ships serving the Canary Islands. For these seamen, signing on to the vessel will be equal to the issuance of a work permit.<sup>72</sup>

Labour contracts for third-country citizens on vessels in the special register for ships to the Canary Islands may be subject to foreign legislation, provided that this legal framework complies with both the ILO conventions that are applicable in Spain and Spanish labour and social legislation.<sup>73</sup>

### **Measures to ensure equal wages and labour conditions**

A variety of measures have been implemented to control the labour conditions for seamen working on board non-Spanish vessels in domestic traffic. The information and reporting requirements related to maritime cabotage traffic performed by EU or EEA shipping companies and vessels include an obligation to submit evidence showing compliance with all requirements pertaining to manning when requested by Spanish authorities. In addition, the monitoring authorities control such compliance and may also impose certain restrictions and sanctions.<sup>74</sup>

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<sup>71</sup> See respectively Art. 253 and Additional Provision 16 NPMMA. In exceptional and justified cases, however, the maritime administration may authorize a higher proportion of non-EU seafarers.

<sup>72</sup> See Art. 20 of the *Ley 55/1999, de diciembre 29, de medidas fiscales, administrativas y de orden social* (BOE no. 312, December 30, 1999, p. 46095). It should be noted here that in Spain the registration of seamen who have been hired by the shipping company (i.e. once they have signed the employment contract for working on board the vessel) involves a mandatory administrative procedure. This procedure includes authorization by the maritime administration office (the Captianía Marítima) in the first port of call and registration in one of the documents that the vessel is obligated to carry with it, the Dispatch and Crew Log (Rol de Despacho y Dotación; see Order of the Ministry of Infrastructure of January 18, 2000, BOE no. 28, February 2, 2000, p. 8971). This authorization must be issued on a non-discretionary basis (i.e. after verification of compliance with all legal requirements for employment of the person concerned) by a representative of the maritime administration. As stated above, this is considered equivalent to the issuance of a Spanish work permit.

<sup>73</sup> Additional Provision 16 NPMMA, Sections 7 and 8.

<sup>74</sup> Non-compliance with the manning requirements, when verified by the competent authority, may result not only in a prohibition to provide the service but also in an administrative penalty for the shipowner (Art. 11 of RD 1516 and Arts. 305 to 320 NPMMA; Arts. 29 to 37 of the Balearic Law 11/2010; Arts. 28 to 36 of the Canary Islands Law 12/2007).

### **Laws and subsidies protecting against international competition**

Measures to protect the Spanish domestic maritime industry, workforce and vessels engaging in cabotage are to a great extent shaped by EU legislation. Manning regulations that apply to vessels in Spanish registers, irrespective of whether they are involved in cabotage or not, also apply to EU and EEA citizens.

No subsidies, tax relief programmes or other forms of governmental support are granted to protect domestic enterprises, fleets or vessels in the context of maritime cabotage or against competitors from the EU/EEA.

Advantages that apply to Spanish vessels have been embedded in Spanish legislation that may have an impact on the conditions for engaging in maritime cabotage traffic, which in general requires that the vessel is registered in Spain and used for cabotage traffic. This applies irrespective of the type of services provided, and irrespective of whether the vessel is registered and operated by a Spanish or an EU-based shipping company.<sup>75</sup>

### **Views of the social partners and others**

Currently, there are no discussions or measures focusing on the wage levels and labour conditions for seamen working on vessels sailing under a foreign flag.

## **5.6 Portugal**

### **Legal frameworks**

In Portugal, cabotage traffic is regulated by Act no. 7/2006. The EU regulation has been implemented by law in Resolutions no. 363/93 (1993) and 184/98.

The main content of the regulation is that with regard to cabotage, to the mainland as well as to islands, the same rights apply to Portuguese vessels and to vessels sailing under an EU/EEA flag. In addition, Portuguese vessels are subject to special regulations. They must be registered in the regular ship register and they must comply with provisions on manning, social benefits and taxes, and pay minimum wages in accordance with collective agreements.

To maintain transport safety the regulation also includes special requirements to cargo freight in terms of the frequency of port calls etc. (Article 5). In such freight traffic, the crew must be EU citizens; third-country citizens can only be signed on in special situations. Moreover, all crew members must be entitled to the statutory minimum wage.

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<sup>75</sup> The benefits associated with registration of the vessel in the Special Registry include tax privileges applicable to corporate tax of shipowners, exemptions applicable to the personal income tax of seafarers, as well as a reduction of social security contributions.

Special conditions apply to Portuguese and EU/EEA vessels that deliver public services. These include an obligation to employ workers from Portugal or the EEA area, as well as a guarantee that no crew member is paid less than the minimum defined by collective agreements. The collective agreements apply to Portuguese vessels engaging in transport to, from and between islands, as well as all other vessels (domestic and EU) engaged in bulk and container freight.

Portuguese legislation on cabotage makes no reference to foreign, non-EU vessels.

### **Views of the social partners and others**

It may appear as though there is little interest in issues pertaining to regulation of cabotage in Portugal, and as far as we have been able to ascertain there is no ongoing debate on this topic.

## **5.7 The Netherlands**

### **Legal frameworks**

The WAGA Act (*Wet Arbeidsvoorwaarden bij Grensoverschrijdende Arbeid*, the Act on labour conditions for cross-border employment) has implemented Directive 96/71/EC (The Posting of Workers Directive). WAGA entered into force on 2 December 1999 (Stb. 1999, 554). According to Dutch law, national minimum-wage regulations and entitlements to paid holidays will apply to workers posted to the Netherlands. Generally applied collective agreements apply to all those who work within the area covered by the agreements, which may thus define more favourable conditions.

The WAGA covers all employees who work temporarily in the Netherlands for whom the labour contract is governed by regulations in another country. In contrast to Directive 96/71/EC, WAGA makes no exceptions for seamen as long as they are working in the Netherlands. It can thus be concluded that the statutory minimum wage applies to all foreign seamen who are working in the Netherlands.

The minimum wage amounts to EUR 1485.60 per month (from 1 January 2014) for full-time employees aged 23 or older. The minimum wage rate is normally raised twice annually, on 1 January and 1 July. The change is based on the development of wage levels defined by collective agreements.

### **EU regulation 3577/92**

The EU regulation entailed no amendments to Dutch law. In other words, the regulation is valid for the Netherlands in the form in which it was adopted.

### **To whom do the provisions apply?**

No distinctions are made between different categories of vessels or seamen.<sup>76</sup>

### **Are there any differences for EU/EEA and non-EU/EEA seamen?**

The only relevant distinction is made between seamen on ocean-going vessels and seamen on vessels in cabotage traffic. The minimum-wage act does not apply to ocean-going vessels that have no home base (Thuishaven) in the Netherlands. This includes vessels sailing under the Dutch flag, but that have a home base elsewhere. In other words: the home base, not the flag, is the chief criterion (i.e. whether the vessel usually operates within Dutch territory).

The WAGA Act applies to all vessels in domestic traffic.

### **Under what conditions will foreign seamen need a residence permit?**

Third-country seamen will normally not need a residence permit to work in cabotage traffic. However, employing such seamen is subject to a duty of notification.

### **Measure to ensure equal wage levels and labour conditions**

The Dutch Labour Inspection Authority (since 2012: Inspectie SZW) is responsible for monitoring compliance with the regulations issued by the UWV on work permits for third-country citizens. Frequent inspections are undertaken in sectors where underpayment and illegal work is widespread.

There are no available figures on cabotage activity in the Netherlands. The fact that a large number of third-country citizens are working in domestic traffic on vessels registered in the Netherlands is regarded as a major problem. In total, 6900 such vessels exist. The maritime workers' trade union, Nautilus, estimates that 1000–1500 third-country citizens are working on these vessels without the required work permit. The

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<sup>76</sup> In 2011, a labour conflict occurred over the collective agreement in the dredging sector. According to the Ministry of Transport and Infrastructure, dredging vessels are defined as ships if they operate along the coast. This means that the ILO collective agreements are applicable, indicating that minimum wages would amount to EUR 400-550 per month. The trade unions and the Ministry of Labour and Social Welfare, on the other hand, claimed that Dutch law should apply, but the employers refused to pay the Dutch minimum wage.

trade union also claims that these workers are paid less than the statutory minimum wage. There have been cases where employers have been granted work permits for their employees on the condition that they would comply with obligations pertaining to wage levels and labour conditions, but have failed to meet these obligations. A large proportion of these seamen hail from the Philippines. There is a long tradition for seamen from the Philippines and Indonesia to work on Dutch ships, but seamen from these countries have now also started to sign on to vessels in domestic traffic because of a shortage of manpower.

In 2013, Dutch inspection authorities imposed a fine of nearly EUR 3 million on a Dutch shipping company and a Cyprus-based enterprise. The Dutch company had hired 164 workers from Romania. In principle, these workers were obligated to have a work permit, but the shipping company and the Cypriot enterprise claimed that the case was encompassed by EU regulations on the free flow of services, and that the authorities hence could not require work permits. According to the inspection authorities, these workers were not posted to the Netherlands, claiming that work was performed from the Netherlands through the Dutch enterprise. Thus, the work had no association with Romania. In this case, work permits would be required, and the workers were entitled to the Dutch minimum wage.

### **Laws and subsidies protecting against international competition**

At the present time, no subsidies are available to vessels in domestic traffic, only to ocean-going vessels.

## **5.8 United Kingdom**

### **Legal frameworks**

The Maritime Labour Convention (MLC) 2006 will be incorporated into British law on 7 August 2014 and will replace all existing laws on the rights of maritime workers. Until then, relevant laws and regulations include:

- Labour conditions: Merchant Shipping Act 1995, Merchant Shipping Regulations 1991
- Wage levels: Merchant Shipping Act 1995, Merchant Shipping (Seaman's Wages and Accounts) Regulations 1972, Merchant Shipping (Seaman's Allotments) Regulations 1972
- Working hours and paid holidays: Merchant Shipping Regulations 2002
- Lodging: Merchant Shipping Act 1995

- Board: Merchant Shipping Regulations 1989
- Health and safety: Merchant Shipping Act 1995, Merchant Shipping & Fishing Vessels (Health and Safety at Work) Regulations 1997

In the following we will review the regulations that are currently in force (i.e. before the MLC is implemented).

The rights of seamen include the right to an employment contract, board and lodging and medical treatment. Seamen on board British ships must sign a written agreement with their employer. The regulation imposes requirements regarding the form and content of this agreement. Certain smaller vessels are exempt from these provisions.

As regards wages, the employees must be paid on a monthly basis and they are entitled to wage slips.

All seamen on board British vessels are entitled to the statutory national minimum wage (NMW), even when the vessel operates on international routes. Vessels that are comprised by collective agreements under ITF may be made subject to other types of wage schemes.

### **Are there any differences between EU/EEA and non-EU/EEA seamen?**

The obligation to pay the statutory minimum wage does not apply to vessels under a non-British flag operating routes between ports in the UK and abroad. However, pursuant to the Equality Act 2010 the minimum wage applies to seamen who work primarily in the UK. This regulation applies also to EU citizens. Enforcement of the minimum wage on board vessels with a foreign flag and with a foreign crew is primarily the responsibility of the courts.

The Immigration Rules regulate access to the UK for third-country citizens. Pursuant to Article 128 seamen will need a work permit:

- to work on ferries operating between two ports in the UK, including ports in Northern Ireland, but not those on the Channel Islands or the Isle of Man,
- to work on ro-ro vessels (where rolling cargo is driven directly onto and off the vessels) between ports in the UK,
- to work on dredging vessels that operate entirely or primarily within UK territorial waters, or
- to work in domestic freight traffic between ports in the UK.

However, a work permit will not be required for the following categories:

- Those who work in ferry services to ports outside the UK, including ports on the Channel Islands and the Isle of Man.



- Those who work on vessels that operate out of a single UK port, but where the journey is primarily undertaken outside UK territorial waters, for example journeys to offshore installations, and in offshore dredging and dumping operations.
- Entertainers, hairdressers and others who strictly speaking are not part of the crew but join the vessel to work during the journey. These can be regarded as contractual workers and will not need a work permit as long as they leave the UK the next time the vessel departs from the UK.

### **Laws and subsidies protecting against competition**

To improve competitiveness, the British government has introduced income deductions for seamen. The deduction applies to seamen who are resident in the UK and other EEA countries.

In 2000 a tonnage tax was introduced and the registration procedures for vessels were reformed, with the intention of increasing the attractiveness of registering in the UK ship register. Other provisions include the competence development programme SmarT, which aims to increase the competence of British seamen. The programme covers approximately 40 per cent of the costs of a three-year cadet training programme.

### **EU regulation 3577/92**

The UK has an open coast policy and permits cabotage. No legal amendments were therefore necessary as a result of the EU regulation. Key provisions regarding cabotage include the following: on “strategic” vessel types, the captain must be a citizen of the UK, the Commonwealth, the EEA or NATO. On other vessel types there are no requirements regarding nationality. However, legislation defines requirements for the owners of the vessels: the vessel must be owned at least 50 per cent by citizens or enterprises domiciled in the EU or British overseas territories.

### **Views of the social partners and others**

Trade unions (such as RMT and Nautilus International) give priority to the following areas:

- Training that can increase the number of British seamen and thus enhance the skill level in the maritime industry, while maintaining the capacity and safety of the maritime sector.
- Wage discrimination: improvements in labour-market regulations that are necessary to prevent low wages and decreasing employment of British crews in the sector. Other areas that the trade unions claim to be worthy of closer attention include the differentials between British and non-British seamen in terms of wages, tax deductions and work permits.

- Regulation: reductions in the budgets of the Maritime and Coastguard Agency that may undermine the agency's capacity to enforce employment conditions and environmental regulations, including ILO/IMO decisions and European legislation.

The UK government and the social partners give priority to actions that aim to improve the competitiveness of the maritime sector.

## 5.9 Brazil

### Legal frameworks

In Brazil, labour conditions at sea are regulated by the national working environment act.<sup>77</sup> It applies to employees on board commercial vessels, Brazilian as well as foreign. Foreigners coming to Brazil to work on a labour contract established by a cabotage enterprise in Brazil are entitled to the same labour conditions as Brazilian workers.

The Brazilian legal system is characterized by a regulatory structure based on explicit legal texts (the “civil law” tradition). The legislation that regulates the work and rights of seamen is highly detailed, and it is connected to other legal acts, such as the Waterway Safety Act (LESTA). The latter regulates the activities of the port authorities, but also defines concepts that have an impact on regulations pertaining to labour law.

### Main content of the regulations

The main legal framework for seamen is embedded in the following laws:

- Consolidation of Labour Laws: this is the main legislative document for workers' rights. The law establishes rights for seamen, including holidays, working hours, overtime, rest periods, pensions and collective agreements.
- Normas da Autoridade Maritima (NORMAMs): this law is established by the Brazilian navy and the Coast and Port Directorate and defines the framework for manning and operation of Brazilian vessels.
- Normas Regulamentadoras (NRs): these regulations encompass health and safety provisions in public and private enterprises that are subject to the Consolidation of Labour Laws. The norms have been prepared by tripartite commissions and define frameworks for each sector.

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<sup>77</sup> The labour relationship between seamen and shipping enterprises is reinforced by Article 7 of Law no. 9.537/97, which states that the signing on and off of employees on board vessels must take place according to the labour contract.

- Normative Resolution 30 (NR-30), Safety and Health at Waterways Work: this provision pertains to health and safety in the maritime sector and encompasses activity on board vessels and drilling platforms, under a domestic as well as a foreign flag.
- Normative Resolutions 81/2008, 71/2006 and 72/2006 regulates the manning on foreign fishing vessels, cruise vessels and foreign vessels or platforms.
- Normative Resolution 72/06, adopted by the National Immigration Council, is also relevant since it regulates the hiring of skilled foreign workers on foreign freight vessels or platforms and establishes a minimum proportion of Brazilian workers on board foreign vessels.
- Normative Resolution 81/08, also adopted by the National Immigration Council, regulates work permits for purposes of granting temporary visas to foreigners working on foreign fishing vessels owned by Brazilian enterprises.

In Brazil, enterprise inspections are undertaken by the Ministry of Labour and the Secretariat of Labour Inspection (SIT). In the maritime sector and on sea, these functions are maintained by the National Coordination of Port and Waterway Labour Inspection (CONTIPA) and the Regional Coordination of Port and Waterway Labour Inspections (CORITPAs).

### **Statutory minimum wage or generally applied collective agreements?**

The minimum wage is a result of negotiation between the social partners and is based on job content and position. This means that there are different rates for vessel commanders, chief engineers, other officers etc. The union density among Brazilian seamen is high, and wages are commonly determined by collective agreements. These workers can be members of national and governmental trade unions. As a rule, the shipping companies are also members of employers' organizations.

### **To whom do the regulations apply?**

With regard to vessels under a foreign flag operating in Brazilian waters, especially in oil prospecting, deep-sea fishing and tourism, the National Immigration Council has introduced certain restrictions on the use of foreign labour in order to protect the employment of Brazilian workers. As a result, foreign seamen on fishing vessels, tour boats and foreign vessels or platforms need a work permit from the Ministry of Labour.

Foreign workers on board foreign vessels or platforms that primarily operate within Brazilian waters need an entry visa and a residence permit. Holders of an international maritime identity card in accordance with ILO Convention no. 108, which has been ratified by Brazil, may be exempt from the requirement for a residence permit if:

- They work on vessels undertaking long journeys between foreign and Brazilian ports,
- and if the vessel has been authorized by ANTAQ for charter in cabotage activity. In this case, they will be granted 30 days of residence (Section 2, paragraph II, of the NR 72/06).

A work permit is a precondition for obtaining a temporary or permanent residence visa. A temporary residence visa is granted to foreign workers on board foreign vessels or platforms for a period of two years, which can be extended. The permit may also encompass tourist transport or work on board cruise vessels for a period of time no longer than 180 days.

Whether the vessel needs to have a minimum number of Brazilian workers or not depends on the period of time in which the vessel stays in Brazilian sea territory and the type of vessel in question. The purpose of this rule is to protect the domestic labour market. The rule says that if the vessel stays in Brazilian sea territory for more than 90 consecutive days, one-third of the crew must be Brazilian nationals. After 180 days, half of all permanent staff on board must be Brazilian nationals, and after 360 days, the entire crew must consist of Brazilians. On tour ships and foreign cruise vessels that stay for more than 31 days in Brazilian sea territory, at least 25 per cent of the employees must be Brazilian nationals.

Domestic enterprises that undertake cabotage in Brazil must apply for work permits for foreign workers on board the vessel. When applying for work permits, the Brazilian enterprise must submit collective agreements or individual labour contracts documenting that their labour conditions are on par with those of Brazilian workers (Law no. 6.815/80).

### **Views of the social partners and others**

The Brazilian political goals of protecting the domestic labour market by forcing foreign vessels and platforms to hire Brazilian workers is being debated in Brazil, by domestic and foreign actors alike. This debate mainly focuses on how insufficient skills among Brazilian maritime workers is a barrier to efficiency in the maritime sector.

## **5.10 United States**

The American cabotage system is regulated by the Jones Act. According to the country report from our sub-contractor in the USA, this regulation means that the labour market is reserved for American seamen. This market has been thoroughly regulated and the seamen all have to be US citizens or residents. The American fleet that sails under flags of convenience is relatively unregulated, however, with the exception of vessels sailing under ITF agreements.

### **Minimum wage requirements for seamen on vessels registered abroad but operating in domestic traffic**

Vessels registered abroad – in the USA commonly referred to as foreign-flag vessels – are excluded from operating in the domestic cabotage market or “the coastwise trades of the United States”. For all intents and purposes, federal labour law will apply to seamen on board vessels under the American flag, including the minimum-wage provisions. Commonly, seamen on board US-registered vessels will be represented by a trade union and receive wages (and other compensations) at a level above the minimum. In practice, the wage level is regulated by collective agreements. These collective agreements are not generally applied. Common practice in the USA is that such agreements apply to a single employer or workplace, and several unions and agreements may thus be in force on each vessel. In practice, however, the shipping industry is thoroughly unionized, rendering a general application of collective agreements superfluous anyway.

### **Differences between US and non-US citizens?**

All licensed officers serving on board US-registered vessels must be US citizens. Up to 25 per cent of the unlicensed seamen on board US-registered vessels may be resident aliens, i.e. they must hold a Green Card.<sup>78</sup> In other words, non-US seamen will need a residence permit.

### **National laws that can help improve competitiveness**

According to the country report, the restrictive American cabotage system has caused the US-flagged fleet to lose out to competition in several areas. The fleet has shrunk dramatically, causing a loss of job opportunities for seamen. The US government has granted several subsidy schemes to US shipping companies, but their vessels nevertheless remain non-competitive.

### **Ongoing debates**

Since foreign seamen are barred from employment on board US-registered vessels and vessels registered abroad are barred from engaging in domestic traffic, there are no ongoing debates in the USA on the labour conditions for foreign seamen working on vessels sailing under a foreign flag.

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<sup>78</sup> <http://www.uscis.gov/greencard>

## **5.11 India**

### **Restrictions on cabotage**

The Indian National Shipping Association (INSA) has first priority when it comes to delivering cabotage services in India. As long as the members of INSA have vessels available, no permission will be granted to vessels registered abroad. If the members of INSA have no available capacity, other vessels registered abroad may operate with no limitations. The cabotage rules prevent foreign vessels from carrying freight from one Indian port to another. As a result, approximately 70 per cent of all Indian freight is reloaded in other ports, such as Colombo in Sri Lanka, Salalah in Oman or Jebel Ali in the United Arab Emirates, before being taken to various ports in India.

### **Regulation of wage levels and labour conditions**

The maritime authorities (the Indian Maritime Administration) imposes no minimum standard with regard to wage levels and labour conditions for employees on board. However, certain agreements between Indian shipping companies, the National Union of Seafarers of India (NUSI) and the Maritime Union of India (MUI) regulate these issues.

### **Restrictions regarding the crew of vessels undertaking cabotage**

All those who undertake cabotage must have permission from the authorities. It appears as though India has regulations similar to those of Brazil with regard to manning, i.e. the requirements for the nationality of the crew members are related to how long they will engage in cabotage. For a duration of between 90 and 180 days, one-third must be Indian nationals and also possess relevant certificates. For a duration exceeding 180 days, at least half of the crew members must be Indian nationals. To the extent that the licensing period is not continuous, the regulation enters into force when the total licensing period within a calendar year exceeds these limitations.

Moreover, the maritime authorities reserve the right to adjust the regulation to ensure Indian tonnage interests, increase Indian trade or to act in the public interest, or for other reasons that must be declared in writing.

## 5.12 Summary of regulations in other countries

Table 5.2: Overview of national cabotage regulations in selected countries

Country	Restrictions regarding the crew engaging in cabotage	Restrictions regarding flag affiliation for vessels engaging in cabotage	Wage regulations
France	A minimum proportion of the crew must be EU, EEA or Swiss citizens.	Only vessels registered in France (the national register) + flags from EU/EEA countries	Seamen are encompassed by the same collective agreements as seamen employed by companies in the same sector established in France. Statutory minimum wage.
Spain	Vessels (under Spanish, EU or EEA flag) in island cabotage must have a Spanish or an EU national as captain and first mate, and at least 50% of the remaining crew must be EU or EEA citizens, except in certain justified cases and by permission.	Only vessels under a Spanish, EU or EEA flag may engage in cabotage services of any kind.	Spanish legislation defines minimum wages. As regards regulation of wage levels and labour conditions for foreign seamen, reference is made to the provision in the EU regulation.
Italy	None for continental cabotage (the rules of the flag state apply). For island cabotage, the rules of the host state apply. Crew members must be EU citizens and preferably speak Italian to be able to communicate with Italian authorities. Wage levels should be equal to those defined by applicable Italian collective agreements.	Only vessels belonging to shipping companies in the EU and using vessels registered in an EU member state and sailing under that flag may engage in cabotage.	Italian wages for vessels in island cabotage and vessels smaller than 650 GRT, for other vessels the rules of the flag state apply. No requirements for minimum wages for seamen on vessels registered abroad engaging in domestic traffic.
Denmark	None.	Denmark practises so-called “open” cabotage, meaning that no limitations are imposed with regard to flag affiliation.	In principle, foreign vessels may be encompassed by a collective agreement if the vessel travels exclusively between Danish ports and an agreement is signed by a trade union and a shipping company. In practice this occurs only rarely.
Portugal	In mainland cabotage (cargo freight) the crew must be EU citizens. Non-EU citizens may be hired only in special situations.	Portuguese and EU citizens have equal rights.	Minimum wages for all crew members equal to corresponding collective agreements for vessels in the national register. Statutory minimum wage for all vessels in mainland cabotage (cargo).
Netherlands	No residence permit required for non-EU citizens on cabotage vessels in the Netherlands.	The Netherlands permits cabotage from EU countries without any restrictions.	Dutch minimum wages apply to all foreign seamen working in the Netherlands. Minimum wages do not apply to vessels with a home base outside the Netherlands.
Sweden	None.	None, with the exception of ferry traffic to and from Gotland, for which permission is required.	Foreign vessels are subject to the same provisions on maritime safety and working environment as Swedish ones. Wage levels and labour conditions are regulated through collective agreement, and there are no provisions for a statutory minimum wage. Swedish trade unions may demand a collective agreement with a foreign shipping company.
UK	None.	No restrictions, only a requirement that the vessel must be owned (at least 50%) by a UK or an EU citizen.	Seamen working in the UK must receive minimum wages, irrespective of where normally they live or where the vessel is registered.
Brazil	After 90 days in Brazil, 1/3 of the crew must be Brazilian nationals, after 180 days half the crew must be Brazilian and after	Foreign vessels must have permission and be registered in the Brazilian ship register. The vessel must be operated by a	Regulated by collective agreements.

	360 days the entire crew must be Brazilian nationals.	Brazilian citizen or shipping company.	
USA	All employees must be US citizens. A certain proportion of some professions may be resident aliens (who have a Green Card).	US flag. US built.	Regulated by collective agreements.
India	Permission from the authorities is required. Requirements regarding the nationality of the crew members depend on the period of time the vessel will engage in cabotage.	The Indian National Shipping Association (INSA) has first priority in delivering cabotage services in India. As long as INSA's members have vessels available, no permissions will be granted to foreign vessels. If INSA's members have no available capacity, foreign ships are free to operate in this market without any restrictions.	No statutory minimum standard regarding wage levels and labour conditions, but some collective agreements between Indian shipping companies and trade unions exist.

### **Restrictions regarding the crew of vessels in cabotage traffic**

The table above shows that there is a variety of restrictions regarding the crew on vessels wishing to engage in cabotage traffic. Some Southern European countries require the entire crew to be EU/EEA nationals. Countries outside Europe impose restrictions on nationality, and the longer the assignment period, the larger proportion of nationals required. In the USA, American citizenship or a residence permit with a Green Card is mandatory.

### **Restrictions regarding flag affiliation of vessels in cabotage traffic**

As regards the flag affiliation of vessels engaging in cabotage, it appears as though the Mediterranean countries adhere to a policy that requires flag affiliation to be from their own country or from the EU/EEA area. The Northern European countries have an open market. Countries outside Europe impose strict requirements to flag affiliation and exclude foreign vessels to a great extent.

### **Wage regulations in the EU countries**

There is a large amount of variety between these countries. Some require national minimum wages, whereas others regulate these issues through (generally applicable) collective agreements. The Southern European countries primarily impose requirements for some form of minimum wage, including on board vessels registered abroad. In some of these countries, these requirements are restricted to island cabotage (and to some vessels smaller than 650 GRT in mainland cabotage) (France, Italy and Spain). This is either explicitly stated or implicit in references to the EU regulation on maritime cabotage. In Portugal, minimum wages apply to all crews according to collective agreements for vessels in the national register. National minimum wages apply to all vessels engaged in mainland cabotage. Regulations in the Netherlands and the UK imply that all employees, including those on vessels registered abroad, are encompassed by minimum-wage schemes. It may nevertheless be difficult to draw any conclusions regarding how these regulations would be interpreted if issues pertaining to wage levels and labour conditions for seamen were to be subject to a conflict. The EU regulation



will apply also in these countries, and there is a possibility that the provisions regarding national minimum wages would be interpreted restrictively if they are contrary to the EU regulation.

Sweden and Denmark have no statutory minimum wage level for seamen on board vessels that are registered abroad and engaging in domestic traffic. Trade unions may, however, require that a collective agreement be signed. Swedish trade unions may require collective agreements with foreign shipping companies. In the USA and India wages are also regulated by collective agreements.

## 6 Summary and discussion

Norway has practised an open policy with regard to freight along the coast. This implies that vessels under another national flag have the right to carry freight between Norwegian ports. During recent years, a constantly growing proportion of all cargo has been carried on vessels registered abroad. Norwegian vessels can be registered in either of the NOR and NIS registers. In simple terms, NOR is a register for vessels in Norwegian domestic traffic, while NIS is for vessels in international traffic. The main feature is that the proportion of the NOR vessels of the Norwegian domestic market has been halved from 2003 to 2012, from 62 to 29 per cent. In 2012, vessels under a foreign flag accounted for 57 per cent of the freight volume. This group includes vessels under flags of convenience as well as vessels in other foreign registers. In 2012, NIS vessels accounted for 14 per cent of all domestic freight.<sup>79</sup>

Norwegian law regulates wage levels and labour conditions on board vessels in third-country registers (for example vessels registered under so-called flags of convenience) unless open mutual traffic has been ensured by bilateral agreements.

[This provision extends to ships engaging in regular or substantial activity between Norwegian ports. The Immigration Act's requirements for residence permits are so-called Norwegian pay and work requirements. The provision does not currently apply to transport between mainland Norwegian ports and installations on the Continental Shelf. Public regulation of pay and working conditions will, then, continue to be stricter for NOR ships engaging in traffic from mainland Norwegian ports to installations on the Norwegian Continental Shelf than for ships in other registers. Furthermore, public regulation of pay and working conditions in coastal traffic is stricter for NOR ships and ships in third-party states' registers than for ships in NIS and EEA registers.] (Kvinge and Ødegård, 2010)

[The Immigration Act cannot be applied to EEA citizens.<sup>80</sup> With respect to EEA citizens, requiring residence permits – under the corresponding Norwegian conditions – will be a restriction of the free movement of labour and thus unlawful under EU law. Norway, however, has in fact chosen to exempt ships registered in EEA countries from

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<sup>79</sup> In principle, NIS vessels are barred from carrying freight between Norwegian ports, but there are some exemptions to this rule.

<sup>80</sup> After the waves of EU expansion in 2004 and 2007, so-called transitional regulations were applied. This meant that workers from the new EU countries did not have access to Norway's labour market. Citizens from ten of these countries had to have work permits to work in Norway, with the requirement for Norwegian pay and working conditions. The transitional period is now over, except for Bulgaria and Romania.

the immigration regulations. This provides incentives for Norwegian shipping companies wishing to circumvent the requirement for Norwegian pay and working conditions to register ships in other EEA countries if the ships are to engage in Norwegian domestic trade. When a ship is registered in another EEA country, both seafarers from the EEA and seafarers from third-party states (a Filipino working on a ship registered in Cyprus, for example) may work in Norwegian domestic trade without being affected by the requirement for residence permits. NOR-registered ships and ships registered in third-party states may thus be said to be met with discrimination in comparison to EEA-registered ships.] (Kvinge and Ødegård, 2010)

Increased competition in the Norwegian market may entail positive as well as negative consequences. For the maritime employees, a larger proportion of foreign vessels at the expense of NOR vessels will entail pressure on their job opportunities. Today, Norway has no regulations that impose requirements on wage levels and labour conditions on vessels registered in the EEA area. Norway has no statutory minimum wage. In other sectors with a large proportion of cheap foreign labour, generally applied collective agreements have been used to counteract low-wage competition. At present, this option is not available with regard to vessels that are registered in the EEA area and engaging in Norwegian domestic traffic. The Act relating to general application of collective agreements applies to employees on vessels and moveable installations under Norwegian flag, but not to crews on board foreign vessels engaging in cabotage in Norway. On the other hand, crews on board vessels registered outside the EEA area need a residence permit in order to engage in Norwegian domestic traffic. To be granted such residence permits, they must have wages and labour conditions at the Norwegian level.

A general application of the collective agreements that are currently in force for NOR vessels will introduce equal minimum conditions for all employees on board vessels in Norwegian domestic traffic, irrespective of where the vessels are registered. As a rule, the flag state will have the authority to regulate conditions on board. In cabotage (shipping in internal waters), however, the rules of the coastal state apply. Thus, Norway may introduce legislative regulations pertaining to foreign vessels in cabotage in Norway. If the vessel is sailing under the flag of another EEA state, however, this option is not as openly available. The transport market within the EU has been liberalized as part of the free internal market. This is regulated through a separate EU regulation for maritime cabotage (3577/92). This regulation appears to impose certain restrictions on Norway's opportunities to define rules for mainland cabotage, but leaves relatively large freedom with regard to island cabotage and transport to installations on the continental shelf. However, transport to the continental shelf passes through international waters. Pursuant to principles of international law, Norway may have limited opportunities to regulate such transport.

The regulation applies in all EU/EEA countries. A study of selected countries within as well as outside the EU shows that many countries impose restrictions on foreign

vessels. In some countries, this also includes requirements for minimum wages. Third countries such as Brazil, the USA and India have to only a limited extent opened their domestic traffic to foreign vessels. See also the summary table in Chapter 5.

### **Legitimate worker protection or protectionism?**

[Could measures involving the requirement of equal pay and working conditions irrespective of a ship's flag affiliation and the seafarers' nationalities be seen as protectionist?]

Protectionism is usually linked to a state's protection of domestic production – with customs barriers, for example. It can also involve one country implementing measures that prevent workers and/or firms from other countries taking jobs or commissions, with the aim of protecting the one country's own workers and/or business.<sup>81</sup>

To apply this to navigation: may it be referred to as protectionism if the local regulatory framework means shipping companies must pay foreign seafarers higher wages than they would otherwise? In the debate about what constitutes protectionism, firstly it seems important to distinguish between degrees of mobility in the services provided. Some services can be conveyed over long distances (Silja Line's booking office, for example, is located in the Baltic) and they can thus be provided where it costs the least. The provision of transport services for the domestic market must of necessity take place in Norway. Insofar as this takes place on a permanent basis, this service provision is part of – and affects competition in – Norway's labour market. It is reasonable, then, to expect those providing the services to maintain equal pay and working conditions irrespective of nationality, yet this does not deserve to be covered by the term 'protectionism'. Secondly, it has been generally accepted since the establishment of the ILO that labour is not an ordinary 'merchandise' and that every country has the right to regulate and protect the labour market.] (Kvinge and Ødegård, 2010)

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<sup>81</sup> It is not easy to distinguish between protectionism in the form of trade barriers with regard to goods and services provided by workers on lower wages in another country and measures that mean that the same foreign labour cannot produce the goods and services in Norway for homeland wages but must comply with Norwegian pay and working conditions. See for example Evju (2009:18–19): 'In international trade, the norm is that a state cannot prohibit the importation of goods and services from low-cost countries. Lower labour costs or poorer working conditions in the exporting country do not in themselves provide a legal basis for excluding its goods and services from the recipient country's domestic market. In that case, people might ask why it should be seen any differently if, instead of sending its goods, an exporter sends its workers to the recipient country to produce the goods or services there. When cheaper services can be performed across borders digitally, it becomes even harder to maintain that there is any real difference between these situations.' (Translated from Norwegian)

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# Appendix 1

The questions we asked to our sub-contractors are listed below.

## Legal frameworks

What regulations and/or administrative provisions (determined by the authorities) regulate wage levels and labour conditions for seamen in your country? (If they are available in English, please include a link or append these documents.)

What is the main content of these regulations?

When responding, please include answers to the following questions (the list is not exhaustive):

- Are there any requirements for minimum wages for seamen on ships that are registered abroad but engaged in domestic traffic? If yes, what is the minimum wage level?
- Are these based on statutory minimum wages or generally applicable collective agreements? (Please state the name of the regulatory instrument.)
- To what seamen/vessels do these requirements apply? (For example, are there any differentiations with regard to the size of vessels (tonnage), flag states, the type of traffic they engage in, for example to/from islands, mainland traffic etc.)
- Has EU Regulation 3577/92 been implemented in your country? If yes, please describe where these rules can be found and what implications they have had for national regulations.
- Are there any differences regarding seamen who are not EU citizens and/or work on vessels with a non-EU flag and those that belong to the EU. If yes, please provide details.
- Under what circumstances do (non-EU) seamen in cabotage traffic not need a residence permit?
- What national measures have been taken in your country to ensure that all seamen in domestic traffic enjoy equal wage levels and labour conditions?
- Is there any national legislation that may help reinforce the competitiveness of domestic vessels in the face of cabotage traffic?
- Are there any government subsidies that help establish competitive conditions in relation to the conditions prevailing in other countries, in the form of (a) wage supplements for employees or (b) tax exemptions?

## **II Opinions among the social partners and others**

Is there any discussion on, and examples of, actions taken in your country regarding the wage levels and labour conditions of seamen on vessels sailing under a foreign flag? If yes, please recount the main viewpoints of the involved parties.

## Appendix 2 Sub-contractors for Chapter 5

Country	Name	Institution	Position
France	Frédéric Turlan	IR Share	Managing Director
Spain	Manuel Alba Fernández	Carlos III University of Madrid	Associate Professor of Law
Italy	Lisa Rustico	Università degli Studi di Milano	Professor Collaborator
Portugal	Reinhard Naumann	Friedrich Ebert Stiftung	Director
Denmark	Sandy Brinck	Oxford Research	Senior Analyst
Netherlands	Robbert van het Kaar	Hugo Sinzheimer Institute for Socio-legal research on Labour and Social Security	Senior Researcher
Sweden	Johan Schelin	Stockholm University, Department of Law	Associate Professor
UK	Christina Niforou	Birmingham Business School	Lecturer
Brazil	Riselia Duarte Bezerra	Independent Researcher	Independent Researcher
USA	Michael N. Hansen	Hawaii Shippers Council	President
India	Abdulgani Y. Serang	National Union of Seafarers of India (NUSI)	General Secretary





# The good life at sea

Foreign registered ships account for a large portion of the traffic between Norwegian ports. Norway follows international regulations for shipping. In this report we discuss what leeway Norway has to regulate wages and working conditions in domestic traffic, and traffic on the Norwegian continental shelf. In addition we make an account of regulations of wages and working conditions on foreign ships in other countries, within and outside the EU.



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