



SOCIAL CONDITIONS APPLICABLE TO WORKERS ENGAGED IN AN ACTIVITY RELATED TO MARINE RENEWABLE ENERGY (MRE) ON BOARD A SHIP OR AT AN OFFSHORE INSTALLATION

21st October 2021

The purpose of this fact sheet is to describe the different social rules that apply to the crew (conditions of nationality, number of employees, etc.) and workers (working conditions, wages, social protection, etc.) on board vessels used for activities related to the installation, maintenance or surveillance of marine renewable energy installations (wind farms, tidal turbines) in French territorial and inland waters, as well as to workers on the *offshore* installations themselves.

It is intended for ship owners or companies carrying out these activities, but also for principals (*i.e.* companies bidding for or having won a contract to install or operate an offshore wind farm, Chambers of Commerce (CCI, Chambre de Commerce et Industrie) or local authorities awarding an offshore works contract, etc.). They can refer to it when they are called upon to assess the offers made to them by maritime service providers. Abnormally low bids should alert them to compliance with these rules.

Indeed, their goal is to ensure that service providers operating ships are in a situation of fair competition on the markets linked in particular to MRE, which are growing strongly and are a source of employment. These rules contribute to the fight against social dumping at sea.

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SHEET 1: The qualification of staff working in the field of MRE

I. Staff working on board a ship

A. Ships flying the French flag

→ Please refer to the diagram in Annex I for a summary presentation

Staff working on board ships flying the French flag used for the construction, servicing or maintenance of marine renewable energy facilities or for transporting staff working on such facilities may be qualified as seafarers or non-seafarers.

1) Seafarer seamen

Seafarers are the staff assigned to the operation of the ship, i.e. the professional activities relating to the operation, running, maintenance and the activities necessary to ensure all the ship's functions (Articles L. 5511-1, R. 5511-1 and R. 5511-2 of the Transport Code).

2) Seafarers other than seamen

Seafarers other than seamen are:

- On the one hand, staff employed on board exploration or mining vessels who prepare or serve meals to staff employed in activities related to offshore works or installations and whose time spent on board exceeds 45 days, whether or not continuous over a period of 6 consecutive months (Articles R. 5511-3 and R. 5511-7 of the Transport Code) ;
- On the other hand, staff who are not seamen who spend more than 45 days on board, continuously or not, over a period of 6 consecutive months (R. 5511-7) and who are not expressly listed among the non-seafarer workers referred to in Article R. 5511-5 of the Transport Code as referred to in 3).

3) Non-seafarers

Non-seafarers are:

- On the one hand, the staff listed in article R. 5511-5 of the Transport Code, in particular the:
 - Workers, technicians or engineers on board ships assigned to exploration or mining activities related to offshore works or installations ;
 - Interpreters, journalists, photographers ;
 - Staff providing non-maritime training;
- And further, staff who are not seamen who spend less than 45 days on board, continuously or not, over a period of 6 consecutive months (R. 5511-7) and who are not expressly listed among the non-seafarer workers referred to in Article R. 5511-5 of the Transport Code listed above.

B. Ships flying a foreign flag

Qualification of staff working on ships flying a foreign flag is determined by the law of the flag state.

II. Staff working at sea, other than on a ship

Employees working on marine renewable energy installations are not seafarers.

Special provisions applicable to non-seafarer MRE employees

As detailed in *Fact Sheets 3 and 4*, certain provisions of the Transport Code mentioned in Article L. 5541-1-1 are applicable to non-seafarer staff doing work related to marine renewable energy on board a ship or on an offshore structure itself within the limits of the exclusive economic zone.

The staff concerned, covered by decree n°2016-754 of 7 June 2016 are:

→ Non-seafarer employees carrying out work on board or from a ship flying the French flag (except for French international register).

→ Non-seafarer employees carrying out work related to the construction, operation or use of artificial islands, installations and structures and any other activity carried out on or from these structures.

SHEET 2: Social standards for the crew of ships operating in the field of MRE

I. Ships flying the French flag first register

On board ships flying the **French flag 1st register**, the provisions of the Transport Code relating to the crew apply (articles L. 5521-1 and seq. of the Transport Code).

II. Ships flying the French flag other than first register or flying a foreign flag

Ships flying the **French flag other than first register or foreign flag operating in the field of MRE in mainland French territorial or inland waters** are subject to the so-called "host State" system. In this context, certain social standards relating to the crew of ships flying the French flag first register are applicable to them.

The host State system

Ships used for maritime works (construction, servicing or maintenance of renewable marine energy production facilities) in French territorial and inland waters, as well as ships used to transport staff working on these facilities, fall within the scope of the **host State** system defined in Article L. 5561-1 of the Transport Code, under the provision of the service provision performed by them, provided that this is carried out primarily in French waters. The criterion of principal activity is analysed with regard to the purpose of the contract.

The host State system makes it possible to subject these ships, whatever their flag (including ships flying the French flag of the French International Register), to the same provisions relating to the nationality of the crew and the number of personnel on board as ships flying the French flag registered in the first register.

With regard to nationality :

- The captain and the officer deputizing for them must be nationals of an EU Member State, a State party to the EEA agreement or the Swiss confederation or another State party to any international agreement having the same scope in terms of the right to remain and work.
- No minimum proportion of nationals of an EU Member State, a State party to the EEA agreement or the Swiss confederation or another State party to any international agreement having the same scope in terms of the right to remain and work is currently required for the crew.

The crew must be made up of a workforce of seamen sufficient in number and level of professional qualifications to guarantee the safety and security of the ship and the persons on board, as well as compliance with watchkeeping, working hours and rest obligations.

This obligation is fulfilled by the presentation of a minimum manning certificate or "*safe manning certificate*" issued by the flag State, which thus certifies that the ship's complement meets the requirements of the international manning standards. Ships unable to present this certificate must submit to the procedure provided for in article R. 5561-3 of the Transport Code.

SHEET 3: Social standards applicable to employees working in the MRE field

I. Social standards applicable to employees working on board ships

1) Employees employed on board ships flying the French flag 1st register

On board ships flying the French 1st register flag, it is the provisions of the Transport Code (articles L. 5541- 1 and seq.) consistent with the provisions of the Labour Code that apply to seafarer staff.

For non-seafarer staff, it is the provisions of the Labour Code and the provisions of the Transport Code that have been made applicable to them by article L. 5541-1-1 of the Transport Code and 1° of decree no. 2016-754 of 7 June 2016 that apply. These provisions are as follows:

- The definition of effective work (article L. 5544-2 and L. 5544-3 of the Transport Code) ;
- The duration of the work (L.5544-4 and L. 5544-5) ;
- Overtime (L. 5544-8) ;
- Break times (L. 5544-11) ;
- Suspension of the organisation of working hours and rest periods in the event of danger to the safety of the ship or persons (L. 5544-13) ;
- Daily rest period (L. 5544-15) ;
- Weekly rest period (L. 5544-17 to L. 5544-20) ;
- Combining legal and conventional leave (L. 5544-23-1).

2) Employees employed on board ships flying the French flag other than 1st register or foreign flag

On board ships flying the **French flag other than 1st register or foreign flag**, certain social standards are applicable to employees under the so-called "host state" system.

The host State system

Ships used for maritime works (construction, servicing or maintenance of renewable marine energy production facilities) in territorial and inland waters, as well as vessels used to transport staff working on these facilities, fall within the scope of the **host State** system defined in Article L. 5561-1 of the Transport Code, in respect of the service provision performed by them in French territorial or inland waters, provided that the services are primarily provided in French waters. The criterion of principal activity is analysed with regard to the purpose of the contract.

The host State system makes it possible to subject employees employed on board these ships to the same social standards (legal provisions and contractual stipulations) as those applicable to employees employed by companies in the same branch of activity established in France.

a) Standards applicable to all employees working on board

Seafarers and non-seafarer employees employed on board ships subject to the host State system shall benefit from all the legal provisions and contractual stipulations (agreements and extended collective agreements) applicable to employees employed by companies in the same branch of activity established in France in the matters provided for in Article L. 5562-2 of the Transport Code, which are as follows:

- Individual and collective freedoms in the employment relationship;
- Discrimination and professional equality between women and men;
- Maternity protection, maternity and paternity leave and childcare, leave for family events;
- Conditions of availability and guarantees due to employees by companies carrying out temporary work activities;
- Exercise of the right to strike;
- Working hours, time off in lieu, paid annual leave, working hours and night work for young workers;
- Minimum wage and payment of wages, including overtime bonuses;
- Rules relating to health and safety at work, legal working age, child labour;

- Illegal work.

Companies should therefore find out about the collective agreements and conventions that apply in France for the activities they intend to carry out in French territorial and internal waters, as well as the legal provisions relating to these various matters, including the minimum wage and working hours. Principals are requested to draw attention to this point when selecting a maritime company.

b) Standards applicable to seafarers working on board only

i. Conditions connected to the employment contract

Every seafarer must have a written employment contract containing the mandatory information provided for in Article L. 5562-2 of the Transport Code, which are as follows:

- His surname and first names, his date and place of birth, his identification number or any other equivalent reference;
- The place and date of conclusion of the contract;
- The surname and forenames or company name and address of the shipowner, employer or person acting in an official capacity;
- The service for which the employee is engaged;
- The duties performed by the employee;
- The amount of wages and discretionary earnings and the number of working hours to which the remuneration provided relates;
- Holiday pay entitlements or the formula used to calculate them;
- The health and social security protection to be provided by the shipowner, the employer or acting individual;
- The right to repatriation;
- The title of the extended French national collective agreement covering ships flying the French flag and carrying out the same navigation and reference to applicable collective agreements within the company;
- The term of the contract if it is concluded for a fixed period.

There are no special conditions for non-seafarer employees.

ii. Condition for entitlement to a social protection scheme

Seafarers subject to the host State scheme must be covered by the social protection scheme of one of the EU Member States or a State party to the EEA Agreement.

Regulation 1408/71 of 14 June 1971 repealed and replaced by Regulation 883/2004 of 29 April 2004 supplemented by Regulation 987/2009 of 16 September 2009 lays down the implementing rules for the coordination of social security systems for Community nationals. In principle, Community nationals are subject to the law of the flag irrespective of the vessel's activity (Article 11(4) of Regulation 883/2004).

Unless they are affiliated to a European social security scheme (under the rules on inter-scheme coordination) or to the National Establishment for Disabled People in the Navy (ENIM, Établissement national des invalides de la marine) they must be affiliated to the general French social security scheme (34° of Article L. 311-3 of the Social Security Code). In all cases, the social protection scheme cannot be a private insurance scheme and must include:

- Health risk, which covers sickness, disability, occupational injury and occupational disease ;
- Maternity-family risk ;
- Employment risk, which covers unemployment;
- Old-age risk.

Attention should therefore be paid to this point, in particular to the incompatibility of private insurance systems with the obligations of the host State, as far as seafarers are concerned (no special obligations for non-seafarer employees).

II. Social standards applicable to employees working on an offshore MRE platform and not on a ship

Non-seafarer employees carrying out work related to the construction, operation and use of artificial islands, installations or works **on or from these structures** shall be subject to the provisions of the Labour Code as well as to the provisions of the Transport Code which have been made applicable to them by Article L. 5541 1-1 and 2° of Decree No. 2016-754 of 7 June 2016, which are as follows:

- The definition of effective work (article L. 5544-2 and L. 5544-3 of the Transport Code) ;
- The duration of the work (L.5544-4 and L. 5544-5) ;
- Overtime (L. 5544-8) ;
- Break times (L. 5544-11) ;
- Suspension of the organisation of working hours and rest periods in the event of danger to the safety of the ship or persons (L. 5544-13) ;
- Daily rest period (L. 5544-15) ;
- Weekly rest period (L. 5544-17 to L. 5544-20) ;
- Combining legal and conventional leave (L. 5544-23-1).

It should be noted that the host State system applies to ships (nationality of the crew, workforce) and to employees working on board (social conditions). **Employees working at sea outside a ship are not covered by this system. If these employees are foreigners, they may, however, be covered by the secondment scheme implemented by the Ministry of Labour.**

SHEET 4: Special case of maximum working hours and postponement of weekly rest periods applicable to workers in MRE fields

These provisions apply to seafarer and non-seafarer employees working on board ships or on the MRE production facilities themselves (Article L. 5541-1-1 of the Transport Code).

I. Exceeding the maximum daily and weekly working hours

The maximum working time is 14 hours in a 24-hour period and 72 hours in a 7 day period (I of Article L. 5544-4 of the Transport Code).

Exemptions to this maximum working time may be made in accordance with the following terms and conditions:

1) The terms and conditions according to which exemptions to the maximum working time may be made must be determined in an agreement or collective agreement

For **seafarers**, by an agreement, an extended collective agreement or a company or establishment agreement dividing the working week or a period other than a week to take into account the continuity of the ship's activity, port constraints or the safeguarding of the ship at sea (II of Article L. 5544-4 of the Transport Code).

The convention or agreement must provide for:

- Measures ensuring compliance in all circumstances with the obligation to keep watch;
- The granting of consecutive rest periods to prevent fatigue;
- The granting of periods of leave to compensate for any derogations from the maximum working time;
- Measures to monitor actual working hours on board and to prevent fatigue.

For **employees who are not seafarers** covered by Article L. 5541-1-1 of the Transport Code, by a company or establishment agreement dividing the working hours over a period of two consecutive working weeks followed by two consecutive weeks of rest to take into account the continuity of activities carried out at sea, port constraints or the safeguarding of the ship or the installations and equipment at sea (1° of Article L. 5541-1-1 of the Transport Code).

It should be noted that if training activities on land should take place, these must not be greater than or equal to one day without the completion of an activity at sea in order to be incorporated in the 2 week / 2 week cycle provided for in 1° of article L. 5541-1-1 of the Transport Code. If they are equal to or greater than one day, they cannot be included in the cycle.

Using other methods of organising working time

It should be noted that the working time organisation system provided for in Article L5541-1-1 of the Transport Code is not exclusive of the use of other methods of organising working time in application of the provisions of the Labour Code.

It is therefore possible to put in place working time organisation based on the Labour Code, in particular the calculation of working time, for seafarers (seamen and seafarers other than seamen) and the workers other than seafarers mentioned in Article L. 5541-1-1 of the Transport Code.

In any case, when calculating annualised working time, as soon as workers fall within the scope of Article L. 5541-1-1 and if an agreement so provides, they must organise their working time in the form of a cycle of 2 weeks of work and 2 weeks of rest. In this case, overtime can be counted over the year or over the cycle.

2) Limits on exceeding working time must be complied with.

- The maximum working time must not exceed 84 hours per 7-day period (article 7 of decree no. 2005-305 of 31 March 2005).

AND

- The maximum duration of 72 hours per 7-day period must be complied with on average over the duration of the reference period set out in the convention or agreement (Article 7 of the aforementioned decree).

II. Weekly rest period

Article L. 5544-18 of the Transport Code allows for an exemption from the weekly rest period. This exemption may be used as a postponement.

For seafarers and for employees who are not seafarers covered by Article L. 5541-1-1 of the Transport Code, the weekly rest period may be postponed for up to 6 weeks and, where a collective agreement provides for it, this postponement may be as long as the duration of embarkation but may not exceed 6 months (Article 1st of Decree No. 2007-1843 of 26 December 2007).

SHEET 5: The prior declaration of activity for ships subject to the host State

I. Foreign ships subject to the host State system

Any French or foreign shipowner, or his representative, with a ship falling within the scope of the host State system must make a prior declaration of activity. This declaration is made in French, by electronic transmission via the simplified online procedure website, at least 72 hours before the start of the activity via the following link:

<https://www.demarches-simplifiees.fr/commencer/declaration-etat-d-accueil-navires-pavil-etranger>

Each activity requires a declaration and all the vessels concerned are included in the same declaration (for more than 4 vessels, the shipowner fills in a second declaration).

In addition to the form filled in online, the declaration includes the following attachments which provide information on the minimum safe manning levels, the number and nationality of all persons employed on board and their conditions of employment, remuneration and social protection:

- for each ship, a copy of the document specifying the minimum safe manning levels, issued under the SOLAS Convention by or on behalf of the administration of the flag State. Failing this, a manning decision referred to pursuant to Article R. 5561-3 of the Transport Code must be provided;
- for ships over 500 gt, a copy of the maritime labour certificate, Parts I and II of the declaration of maritime labour compliance drawn up in application of the Maritime Labour Convention, 2006, of the International Labour Organization and the inspection report that enabled establishment of the maritime labour certificate;
- for each ship, a copy of the list of all persons employed on board on the first day of the declared activity;
- a copy in French of the standard employment contracts for seamen and seafarers other than seamen;
- a copy in the French language of the different types of pay slips issued to the employees employed on board.

II. French ships subject to the host State system

French vessels falling within the scope of the host State system that have a fitting out permit are exempt from the prior declaration of activity (Article R. 5232-9 of the Transport Code). They may be subject to checks to ensure that the social conditions applicable in the host State are complied with.

Secondment regime

The provisions relating to secondment **are not applicable to employees working on board ships performing activities in French waters**, pursuant to Article L. 5541-3 of the Transport Code. No declaration of secondment is therefore required for these employees. Only the prior declaration of activity related to the "host State" system is required.

Employees working on **the offshore MRE platforms themselves** do not fall within the scope of the host State and may therefore be subject to secondment provisions.

SHEET 6: Sanctions applicable in the event of non-compliance with the provisions of the host State

The following sanctions are applicable to shipowners who do not comply with the conditions laid down in the host State.

Failure to declare their activity or incomplete declaration

Failure by the shipowner to make the declaration of activity or failure to make a complete declaration shall be punished by the fine laid down for fifth class offences.

Failure to present documents to inspecting officers

Failure to present the requested documents to inspecting officers or failure to present them in French is punishable by the fine laid down for fifth class offences.

Obstruction

Obstructing the fulfilment of the duties of a labour inspector or labour inspector is punishable by one year's imprisonment and a fine of €3,750.

Employment contract irregularity

A fine of €3,750 shall be imposed on shipowners who recruit seafarers:

- without having drawn up a written employment contract;
- by having concluded an employment contract which does not include certain information (see Sheet No. 5, Social conditions in the host State) or which includes such information in a deliberately inaccurate manner.

A repeat offence is punishable by six months' imprisonment and a fine of €7,500.

Ignorance of the obligation to benefit from social protection

A fine of €3,750 shall be imposed on shipowners who fail to comply with the obligation to provide seafarers with a social protection scheme of one of the Member States of the European Union or of a State party to the European Economic Area with mandatory coverage of health, maternity-family, employment and old-age risks.

Infringements give rise to as many fines as there are seafarers concerned.

Failure to pay wages

The fine is imposed as many times as there are employees concerned.

The following acts are punishable by the fine laid down for fifth class offences for the shipowner:

- to pay wages lower than the growth-indexed minimum wage provided for by articles L.3231-1 to L.3231-12 of the Labour Code ;
- to pay wages lower than the minimum monthly wage provided for in Article L.3232-1 of the Labour Code.

In the event of a repeat offence by a natural person within one year of the expiry or limitation period of the previous penalty, the maximum fine incurred is increased to 3,000 euros.

In the event of a repeat offence by a legal entity already convicted and for which they may be held accountable, within one year of the expiry or limitation period of the previous sentence, the maximum applicable fine rate is ten times that applicable to natural persons.

In the event of several offences leading to repeat offences, the fine is applied as many times as new offences are recorded.

Non-application of collective conventions or agreements

The fine is imposed as many times as there are employees concerned.

The following acts are punishable by the fine laid down for fourth class offences for the shipowner:

- to pay wages lower than those set down in the collective agreement or the extended collective labour agreement applicable to ships flying the French flag carrying out the same activity ;
- to disregard agreement stipulations relating to discretionary earnings provided for in the collective agreement or extended collective labour agreement applicable to ships flying the French flag carrying out the same activity.

Ignorance of the conditions for exercising the profession of seaman or non-seaman seafarer

The fine is imposed as many times as there are seafarers concerned.

A shipowner employing seaman or non-seaman seafarers who do not have the following necessary qualifications shall be punished by the fine prescribed for fifth class offences:

- valid certificates of medical fitness;
- valid certificates and evidence of training in accordance with the requirements of the International Maritime Organization's 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and the International Labour Organization's Maritime Labour Convention.

SHEET 7: Visas

For all staff on board ships flying foreign flags, a stay in French territorial waters is not equivalent to a stay on French territory.

I. Citizens who are nationals of the European Economic Area or Switzerland

As a citizen of a country in the European Economic Area or Switzerland, no residence permit is required to stay in France (particularly for going ashore and transit).

II. Citizens who are not nationals of the European Economic Area or Switzerland

For nationals from outside the European Economic Area or Switzerland, the rules applicable are different between seafarer staff and non-seafarer staff.

As regards seafarers who hold a seafarers' identity document or any other equivalent professional document attesting to their status as seafarers, when on land they are not considered as if they were staying on French territory but "going ashore". This going ashore may take place within the zone determined by prefectural decree.

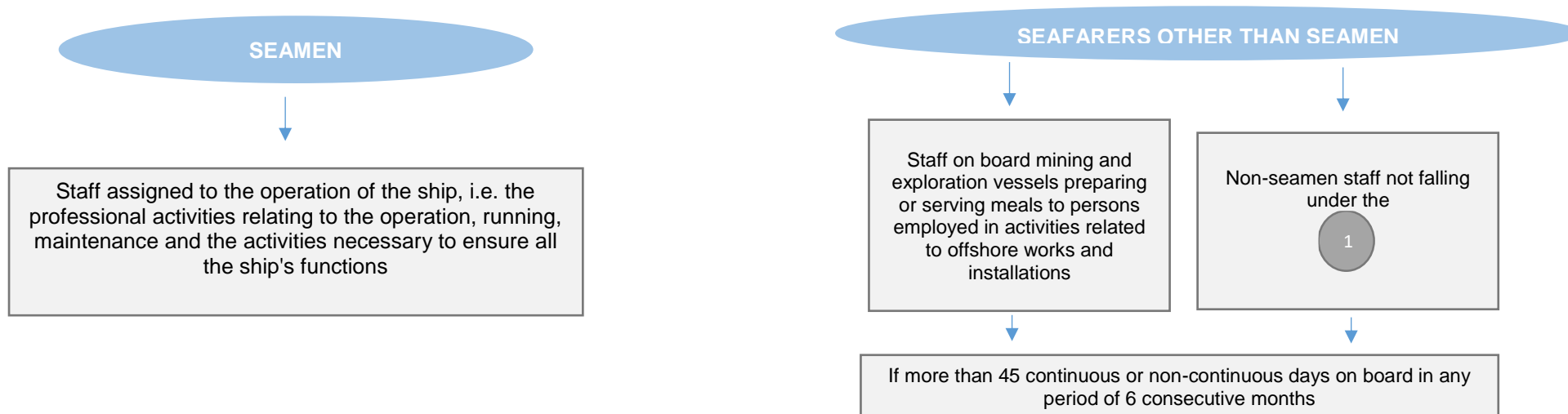
However, if a journey is made to renew crews (ship/aircraft for example), a transit visa is then required.

As regards non-seafarer staff or seafarers who do not hold a seafarer identity document or any other equivalent professional document attesting to their status as seafarers, they will have to have a short-stay visa to go ashore or transit.

APPENDIX I: Qualification of staff working in the field of MRE on board ships flying the French flag

SEAFARERS

Any person, whether employed or not, exercising a professional activity on board a vessel



NON-SEAFARERS

