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The International Ship-Registers in Europe: An Analysis from the Labour Law Perspective

Abstract

The article underlines the issues surrounding international (second) ship-registers from a labour law perspective. The registers specifically analysed are the French, German, and Italian registers. The spread of international registers in the EU is bringing the working conditions onboard European ships into line with those prevalent in developing countries. Moreover, these registers can lead to wage dumping and pay discrimination, creating challenges for the employment prospects of European seafarers. Consequently, on a few occasions their legitimacy in relation to constitutional principles and European law has been questioned. Given their impact on workers, the author believes international registers cannot be considered a viable solution to the shipping crisis affecting the European Union Member States.

Key words

Globalisation, maritime sector, ship-registers, wage dumping, pay discrimination, European law.

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1. Introduction

With the rise of globalisation, certain countries have embraced the practice of allowing the registration of ships belonging to any shipowner, regardless of their connection with their territory. To attract more shipowners, these countries usually provide attractive fiscal incentives and low social and labour requirements. This phenomenon is commonly referred to as "flags of convenience" or, more recently, "open registers"[1]. Consequently, European shipowners started to reflag their vessels to these more advantageous jurisdictions[2].

This development has not only resulted in general worsening of working conditions onboard, but has also sparked a crisis within the European shipping industry. Indeed, the European traditional maritime countries (TMCs) found it increasingly difficult to cope with the commercial challenges arising from the expanding global market and the proliferation of open registers[3].

More precisely, these countries grappled with the national shipowners' disinterest in flying their flag, resulting in loss of ships, personnel, and, ultimately, relevance of the national merchant fleet[4]. Therefore, European TMCs sought ways to bolster their shipping industry. At one point, the only viable option to regain the lost competitiveness seemed to be the establishment of their own open registers. These were conceived as supplementary to the classic national registers and were commonly referred to as second or international registers.

2. Research Purpose and Method

The research analyses the functioning of international ship registers in Europe, with a particular focus on the Italian, French, and German international registers. The primary objective is to underline the challenges behind these registers from a labour law perspective. Specifically, it seeks to illuminate the issues related to the wage dumping and pay discrimination stemming from these registers. The overarching aim is to understand whether these registers can genuinely serve as a solution to the internationalisation of the maritime labour market and its consequences.

The research methodology encompasses comprehensive examination of legislative texts that have introduced the international registers within the considered legal systems. Additionally, it involves a thorough review of the scientific literature available on the subject in the various countries. Furthermore, the research purpose will be pursued by ana-

1 *Ex multis*, see: Boczek, 1962.

2 Basedow even refers to a 'decimation' referring to the German fleet. Basedow, 1990, p. 213.

3 Romagnoli, 2006, p. 116.

4 *Ibid.*, p. 122.

lysing judicial decisions rendered by national courts and the European Union Court of Justice (hereinafter ECJ) on the legitimacy of the laws establishing international registers.

3. International Registers in Europe

3.1. History and Functioning of International Registers in Europe

Since the 1990s, many EU Member States have established second registers that are laxer than national ones. These second registers are typically designated for ships sailing transnational routes, hence earning the appellation "international registers".

The introduction of international registers in Europe is linked to the flags of convenience phenomenon. As previously noted, flags of convenience have led to a deterioration of working conditions within the maritime sector. During the initial stages of the phenomenon, which pales in comparison to its current state extent, flags of convenience were primarily associated with three countries: Panama, Liberia, and Honduras, and their registers were frequently collectively referred to using the acronym "Panlibhon"[5].

Subsequently, the need of other maritime states to compete with these flags prompted them to engage in a race to the bottom, resulting in widespread deterioration of working conditions onboard. The flags of convenience phenomenon increased and evolved into that of open registers. Open registers are those available for any ship, regardless of the nationality of the shipowner or operator and the vessel's place of construction. They provide very favourable registration conditions to attract more shipowners, sacrificing safety and adequate working conditions[6].

Some second registers are today considered as open registers in every respect. For example, both the French and German second registers were officially included in the list of open registers drawn up by the International Transport workers' Federation (ITF)[7].

3.2. Main Issues of International Registers

The criticality of the proliferation of international registers in Europe can be attributed to two main problems.

First, these registers allow the employment of workers from labour-supplying countries, and the law chosen to regulate the employment relationship is that of the seafarer's country of residence[8]. This implies that if, for example, an American shipping company

5 See: Shaughnessy and Tobi, 2006.

6 Aloupi, 2020, pp. 208 ff.

7 The ITF is the global union of maritime workers. On its website, a periodically updated list of flags of convenience (as the union still calls them) can be found. See: <https://www.itfseafarers.org/en/focs/current-registries-listed-as-focs>.

8 Charbonneau, 2016, pp. 268, ff.

registers a ship in the French second register and hires personnel from the Philippines, it may treat the crew under the Philippine law labour protection. This can result in very severe forms of wage dumping.

Also, usually the crew does not come from a single country. In that case, each crew member is subject to the regulations of their respective country of residence. This can lead to discrimination among workers performing the same tasks on board the same ship, above all pay discrimination. The maritime sector suffers from a generalised problem of pay discrimination because of the legal status of ships. Despite bearing the nationality of the flag state, they are not part of its territory[9]. As some courts have adjudicated, this can justify a different treatment among the crew of the same ship[10].

The problem of pay discrimination was only partly solved by the International Maritime Labour Convention (MLC)[11] and the action of the ITF. As far as the MLC is concerned, it provides through a non-binding guideline a minimum wage for all seafarers. The amount is set periodically by the Joint Maritime Commission[12]. However, this is a very low wage, based on labour-supplying countries' pay levels[13]. As far as the ITF is concerned, the MLC allows collective agreements between shipowners and seafarers' organisations to set higher wage levels[14]. The ITF succeeded in imposing a higher international minimum wage, but it applies only to seafarers embarked on ships flying flags of convenience[15].

Secondly, ships registered in second registers, because of bareboat contracts, are operated by shipowners who temporarily register them in even more lenient registers. In that way, shipowners have an even easier and more *tranchant* way of circumventing the enforcement of national labour law.

Normally, it would not be allowed to sail simultaneously under two different flags. However, the use of a bareboat contract facilitates the evasion of this principle, since the

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9 In this sense, see: Chaumette, 2006, pp. 283–285: Cabeza Pereiro and Rodriguez Rodriguez, 2015, pp. 11 ff.

10 In this sense argued, for example, the French Constitutional Court : "*Il résulte des règles actuelles du droit de la mer qu'un navire battant pavillon français ne peut être regardé comme constituant une portion du territoire français. Dès lors, les navigants résidant hors de France qui sont employés à bord d'un navire immatriculé au registre international français ne peuvent se prévaloir de toutes les règles liées à l'application territoriale du droit français*". French Constitutional Court (Conseil Constitutionnel), Decision No. 2005-514, 28 April 2005, in Official Journal of 4 May 2005, para. 33.

11 International Labour Organization (ILO), Maritime Labour Convention, 23 February 2006.

12 MLC, Guideline B2.2.4, para. 1.

13 The amount is in the range of USD 600/700 per month. Moreover, this minimum wage is not strictly enforced, as the monitoring of its implementation is, unfortunately, quite difficult.

14 MLC, Guideline B2.2.4, para. 2.

15 Lillie, 2004, pp. 51 ff.

lessee can re-register the ship under a new provisional flag[16]. This stratagem is employed to exploit European reserved markets while reaping the advantages of an open register[17]. The using of a provisional flag serves the interests of both the company and the European states. It enables shipping companies to obtain more remunerative conditions, while allowing European states to avert an exodus of their fleets[18]. This practice was also acknowledged by UNCTAD, the UN body responsible for regulating trade and economic development, in the 1986 Geneva Convention (although this Convention never achieved the requisite number of ratifications for it to become enforceable)[19]. In Italy, the bareboat contract was also regulated by Law No. 234 of 1989 concerning the temporary suspension of the Italian flag[20].

The international registers system also impacts European seafarers' employment chances. Shipowners can hire non-EU seafarers while maintaining the European flag, leading to a reduction in the prospects for recruitment among EU-resident seafarers. This situation almost exclusively affects ordinary seafarers (able seamen), while officers and commanders face less competition from their counterparts in labour-supplying countries. Indeed, the maritime labour market can be more accurately divided into two distinct sub-markets: one comprising ordinary seafarers and the other composed of officers. EU-resident ordinary seafarers are those who are gradually being replaced by non-EU seafarers due to the new opportunities opened up by second registers. Conversely, when it comes to officers, there is currently a shortage in Europe, with shipowners struggling to find qualified personnel[21]. The situation has been even further exacerbated by war resulting in a reduced availability of Ukrainian and Russian officers. In general, younger individuals are increasingly disinclined to pursue a career as a navigation officer, which is unsurprising, given the risk of abandonment and criminalisation[22], the separation from their families, and the constant need for professional updating. It is also noteworthy that

16 See: Caliendo, 1989, pp. 379 ff.

17 Sisto and Valenti, 1996, pp. 909 ff.

18 Sia, 2001, p. 599.

19 Romagnoli, 2006, p. 118; Zunarelli, 1986, pp. 853 ff.

20 Law No. 234/1989, Provisions concerning the shipbuilding and shipowning industry and measures in favour of applied research in the naval sector (*Disposizioni concernenti l'industria navalmeccanica ed armatoriale e provvedimenti a favore della ricerca applicata al settore navale*), 14 June 1989.

21 For data on crew shortage at European level, see: <https://transport.ec.europa.eu>.

22 The term criminalisation refers to the circumstance where seafarers are charged with criminal offences following incidents involving the ship. They are often held hostage pending the resolution of the dispute and, in some cases, the reasons for detention are not made clear to the seafarers themselves or to the international community. Sometimes, detention conditions violate their basic human rights. See: IMO Guidelines on fair treatment of seafarers in the event of maritime accident, Resolution A.987, 1 December 2005.

since the onset of the Covid-19 pandemic, which precipitated the crew change crisis, even among the most motivated officers, some have opted for alternative career paths.

3.3. The French International Register

The French international register (RIF)[23] was established in 2005 by Law No. 412, with the primary aim of halting the decline of the French merchant fleet and rendering it more appealing to ships involved in long-distance trade or international traffic. As regards the crew composition, the Law mandates shipowners to maintain a minimum of 25% of European seafarers on RIF-flagged ships that are not eligible for, or no longer receive, tax incentives. For those ships that do benefit from such incentives, the requirement is elevated to 35%[24].

A hard core of labour rights, encompassing freedom of collective association, right to collective bargaining, right to strike, protection of health and safety at work, protection in case of dismissal, applies uniformly to the entire crew[25] on the French international register. Nevertheless, this register permits different wage levels for French residents compared to foreign seafarers. In fact, Law No. 2005-412 does not apply to French seafarers, who remain subject to the provisions of the Maritime Labour Code (*Code du Travail Maritime*)[26]. Therefore, as noted by Chaumette, it can be argued that "the principle of 'equal work, equal pay' dissolves at sea"[27]. However, it should be mentioned that a ministerial decree, periodically updated, establishes a minimum wage for non-EU seafarers on RIF-flagged ships[28].

In terms of social security, not all crew members employed on RIF-flagged ships are enrolled in the French special scheme for seafarers administered by the National institution for disabled seafarers (*Établissement national des invalides de la marine*). This is due to the fact that the country of residence is an essential criterion for defining the applicable social security scheme[29].

The Law that instituted the RIF underwent a constitutional scrutiny[30]. According to the French Constitutional Court, the different social security and pay treatment among

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[23] The reference is not to the TAAF register, whose establishment dates back to 1986 and which is based in the overseas territory of the French Southern and Antarctic Lands, but to the international register based in France established in 2005.

[24] Law 2005-412 of 3 May 2005 (*Loi relative à la création du registre international français*), Article 5.

[25] Chaumette, 2015, p. 9. For seafarers residing outside Europe, this hard core is supplemented by France's international and Community commitments.

[26] Guadagna, 2006, p. 690.

[27] Chaumette, 2006, p. 276.

[28] Law 2005-412, Article 13.

[29] *Ibid*., Article 31.

[30] French Constitutional Court, Decision No. 2005-514.

the crew is justifiable due to the diversity of situations, taking into consideration the distinct economic conditions of the states in which the workers' interests are located. These different conditions, in the opinion of the Court, allow different wages and social protection rules[31], because "the center of the material and moral interests of the seafarer is located at their family residence, as if they were a home-based worker"[32].

As mentioned, the register's explicit objective is to enhance the standing of the French flag and bolster its competitiveness in the global market. To contend with open registers, the modulation of workers' rights is employed[33]. In this respect, the Court openly argued that the unequal treatment of French and foreign workers is justified by the national interest of advancing the French maritime fleet[34].

Furthermore, the decision was motivated by pointing out that Law 2005-412 explicitly references the obligation to uphold the international and European commitments made by France[35]. According to the Rome I Regulation, the law chosen by the parties may not deprive the employee of the protection guaranteed by the mandatory rules that would apply in absence of a choice[36]. Nevertheless, the residual criterion of the Rome I Regulation in absence of a choice is the one of the law of the country with which the employment contract has the closest connection[37]. In the case of non-EU seafarers, their country of residence could be identified as the country with which the employment contract has the closest connection, even if they are embarked on an EU-flagged ship[38]. In this scenario, the law of the country of residence—which could be a developing labour-supplying country—would serve as the baseline level of protection[39].

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31 French Constitutional Court, Decision No. 2005-514, para. 34. For a comment on this specific aspect, see: Schoettl, 2005, p. 74.

32 Chaumette, 2015, p. 11.

33 Ruozzi, 2005, p. 467.

34 French Constitutional Court, Comment to Decision No. 2005-514 of 28 April 2005, in Cahier No. 19, 2005. For a comment on this aspect, see: Chaumette, 2006, p. 287.

35 Law No. 2005-412, Articles 12 and 13.

36 Regulation No. 593/2008 of the European Parliament and of the Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I), Article 8(1). Before 2008, reference was actually made to the 1980 Rome Convention on the law applicable to contractual obligations, later transposed into the Rome I Regulation. In any case, the Rome Convention, in Article 6(1), already stated the following: "the choice of applicable law by the parties shall not deprive the employee of the protection afforded to him by the mandatory rules of the law which would govern the contract in the absence of choice".

37 Regulation No. 593/2008, Article 8(4).

38 Sia, 2001, p. 615. *Contra*: Basedow, 1990, p. 218.

39 Guadagna, 2006, p. 693.

3.4. The Italian International Register

The Italian international register (R.I.) was established by Decree No. 457 of 1997, subsequently converted into Law No. 30 of 1998. It pursues a twofold objective: preventing the flagging out of Italian vessels and enticing large international shipping companies to hoist the Italian flag[40]. Therefore, the register is exclusively intended for ships engaged in commercial traffic and exclusively employed for international navigation[41].

One of the noteworthy aspects of the Law establishing the Italian international register pertains to the regulations concerning the crew. Prior to its enactment, the rule of the necessary link between the ship's flag and the crew's nationality was generally applied. In contrast, the international register grants shipowners the flexibility to employ non-EU seafarers, thereby deviating from the provisions of Article 318 of the Code of Navigation (*Codice della Navigazione*)[42]. The applicable law for these non-EU seafarers is determined by mutual agreement between the parties[43]. Needless to say, these rules permit a discrimination among the crew members, depending on whether they are nationals of developed or labour-supplying countries, much like in the French international register. Article 3 of Law No. 30/1998 does prescribe a subsidiary criterion in the event that the parties fail to make a choice. In the initial version of the Decree, the subsidiary criterion was based on the nationality of the non-EU worker[44]. However, this provision was removed from the final text due to concerns about its potential discriminatory nature, and the settlement of the question was deferred to collective bargaining agreements[45].

The distinct feature of Italian legislation is its emphasis on the significance of collective bargaining. To be registered in the R.I., ships are required to obtain a specific ministerial authorisation[46] which takes into consideration the national collective agreements

40 Sia, 2001, p. 602. The author writes that the objective was partially achieved, since the Italian merchant fleet, following the establishment of the R.I., grew by 10% in terms of tonnage (Confitarma data).

41 Berlingeri, 1998, pp. 532–533.

42 "The crew of national vessels armed in the ports of the Italian Republic must be entirely composed of Italian nationals or nationals of other countries belonging to the European Union" (Article 318(1) of the Italian Navigation Code). The possibility of employing non-EU personnel in certain circumstances on board ships flying the Italian flag was then stated in general terms with the reform of Article 318 implemented by Law No. 88 of 2001, which established in the second paragraph that this may be provided for by national collective agreements between the most representative trade associations.

43 Law No 30/1998 converting Decree No. 457/1997 (*Conversione in legge, con modificazioni, del decreto-legge 30 dicembre 1997, n. 457, recante disposizioni urgenti per lo sviluppo del settore dei trasporti e l'incremento dell'occupazione*), Article 3(2).

44 Firriolo, 2017, p. 156.

45 Zanobetti Pagnetti, 2008, p. 196.

46 Romagnoli, 2006, p. 123.

in force[47]. In 1998, trade unions and employers' confederations signed a Memorandum of Understanding stipulating that such authorisation may only be released after trade unions have verified the shipping company's collective bargaining status[48]. This entails verifying whether the shipowner correctly adheres to the national collective agreement applicable to the sector.

As regards the law governing the employment contract of non-EU seafarers aboard R.I.-flagged ships, Law No. 30/1998 stipulates that the law selected by the parties takes precedence, but it must adhere to the minimum wage and social insurance requirements established by collective agreements. In turn, these conditions must align with international standards laid down by the ITF, which serve as a model for national social partners[49]. In simple terms, the minimum conditions negotiated by the ITF at the international level serve as a benchmark for assessing the adequacy of the wages of non-EU seafarers on R.I.-flagged ships[50].

As illustrated, collective bargaining has a pivotal role that extends beyond mere mediation[51]. Social partners have decided that the law of the non-EU seafarers' residence should govern their employment relationship. Shipowners are obligated to provide non-EU seafarers with a bonus to cover their contributions in their country of residence[52]. However, it is evident that European seafarers enjoy superior protection. In essence, since social partners have decided to allow pay discrimination, the Italian legal system bears a striking resemblance to the other systems analysed, albeit with a different route to the same outcome.

A part of Italian doctrine has argued in favour of the compatibility of the R.I. with constitutional principles[53], particularly citing Article 36 of the Italian Constitution. Article 36 states that

> "the worker has the right to a remuneration that is commensurate with the quantity and quality of his work and in any case sufficient to ensure for himself and his family a free and dignified existence".

The proponents of this view contend that the R.I. meets this criterion, asserting that the countries of residence of non-EU seafarers serve as their primary spending markets[54],

47 Decree No 457/1997, Article 1(3).

48 Sia, 2001, p. 604.

49 Decree No. 457/1997, Article 3(3). For a description of the role of the ITF in the maritime sector, see: Lillie, 2004, pp. 47–60.

50 Sia, 2001, p. 613.

51 *Ibid.*, p. 619.

52 Confitarma, Filt-CGIL, Fit-CISL, UIL-Trasporti, Agreement of May 1998.

53 See, for example: Ruozzi, 2021, pp. 192 ff; Guadagna, 2006, pp. 698 ff; Ruggiero, 2000; Flammia, 1999; Lucifredi, 1998.

54 On the principle of sufficient remuneration and the cost-of-living criterion, see: Nogler and Brun, 2018, p. 40 ff; Cataudella, 2013, pp. 86–88; Novella, 2012, pp. 280–324.

and, therefore, their ability to attain a free and dignified existence would not be compromised[55]. According to Italian case-law, the sufficiency of remuneration can be assessed in terms of purchasing power[56]. Nevertheless, the premise of the reasoning appears flawed. The life of a seafarer predominantly takes place on board a ship for many months of the year, making their country of residence not necessarily the primary market for their wages. Nevertheless, the Italian Constitutional Court has not yet had the opportunity to rule on the legitimacy of this particular regulation. It is conceivable that the Court may reach a decision similar to other national courts, relying on the "lesser evil" justification. This outcome would align with the perspective espoused by legal scholars, who argue that

> "it is really difficult to find a solution other than the identification of differentiated legal regimes, which satisfies both the need to contain operating costs and to revitalise the fleet"[57].

3.5. The German International Register

The second German register (I.S.R.) was introduced in 1989 for German-flagged ships engaged in international traffic[58]. To be precise, it functions more as an additional list within the traditional register. The Law establishing the second register is notably brief and concise[59]. It primarily amends the Law on the German flag[60] outlining the registration requirements, designating the competent administrative authority, and, of course, delineating the labour-related implications of the registering in the second register. Regarding the labour aspect, the Law states that employment contracts of seafarers on I.S.R.-flagged ships who are not resident in Germany are not automatically governed by German law. It allows for the application of the employment conditions stipulated by the law of seafarer's country of residence. In practice, these conditions are typically less favourable, both in terms of social security and wages, compared to what German seafarers receive.

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55 Lucifredi, 1998, p. 326.

56 See, above all: Cassation Court (Corte di Cassazione), Decision n. 10260, 26 July 2001, in Il Foro Italiano No. 11/2001, pp. 3087–3094.

57 Guadagna, 2006, p. 689.

58 Law on the Introduction of an Additional Register for Sea-going Ships under the Federal Flag in International Traffic, (*Gesetz zur Einführung eines zusätzlichen Registers für Seeschiffe unter der Bundesflagge im internationalen Verkehr vom 23.3.1989*), 23 March 1989, in Federal Law Gazette, Part I, Article 1.

59 Basedow, 1990, p. 214.

60 Law on the German flag (*Flaggenrechtsgesetz über das Flaggenrecht der Seeschiffe und die Flaggenführung der Binnenschiffe*), in Federal Law Gazette, Part III, No. 9514-1-1.

The Law establishing the I.S.R. underwent constitutional scrutiny in 1995[61], specifically concerning its compatibility with the principles of freedom of association and equality enshrined in the German Constitution. In its deliberation, the German Constitutional Court adopted a "very realistic"[62] approach, reasoning that the alternative to having such a register would be to permit the complete abandonment of the German merchant fleet's national flag in favour of cheaper flags. This, in turn, would potentially enable the circumvention of German labour law in its entirety. The international register, in other words, would be the lesser evil considering the unbridled international competition and the globalised labour market. Therefore, the Court concluded that the general balance of the choices made by the legislator was not contrary to German constitutional principles[63].

Furthermore, regarding the principle of equality, particularly in relation to the pay discrimination, the German Constitutional Court contended that there was no discrimination, as the difference in treatment was based on the residence and not on the nationality of the seafarer[64]. In general, the stance of the German Constitutional Court closely resembled that of the French court. It essentially dismissed the matter by asserting that the situations of European seafarers and non-European seafarers are not comparable, given that wages are spent in two entirely different countries in terms of cost of living. Chaumette astutely noted that the realism exhibited by the German Court appears to stem from a principle of adapting labour law to the demands of international competition[65].

The I.S.R. was also the subject of a ruling by the ECJ, known as the *Sloman Neptun* case[66]. The primary question revolved around the favourable tax and social security regime available to owners of I.S.R.-flagged ships and its compatibility with the European state aid regulations[67]. However, the aspect of particular interest here pertains to the

61 Federal Constitutional Court First Senate (*Bundesverfassungsgericht Ersten Senats*), Introduction of an international maritime register (second register) for merchant ships operating in international traffic under German flag (*Einführung eines internationalen Seeschifffahrtsregisters (Zweitregister) für unter deutscher Flagge im internationalen Verkehr betriebene Handelsschiffe*), 10 January 1995, in Official collection No. 92, pp. 26–53.

62 Chaumette, 2001, p. 65.

63 Actually, the Court did declare one article of the law to be illegitimate – namely Article 21(4), sentence 3 – since it did not allow the German national trade union to negotiate the working conditions of all its members, and not only of German resident workers. This was considered to be incompatible with Article 9.3 of the German Constitution. See: Federal Constitutional Court, 10 January 1995, para. 49.

64 Federal Constitutional Court, 10 January 1995, para. 96. For a comment, see: Zanobetti Pagnetti, 2008, pp. 79–82.

65 Chaumette, 1995, p. 1003. See: Federal Constitutional Court, 10 January 1995, paras. 16, 17, 63 and 64.

66 CJEU C-72/91 and C-73/91 *Sloman Neptun Schiffahrts AG c. Seebetriebsrat Bodo Ziesemer der Sloman Neptun Schiffahrts AG* of 17 March 1993.

67 For an analysis of the concerned ruling, see: Fotinopoulou Basurko, 2023, pp. 34–40.

related question concerning potential discrimination. As previously explained, German law permits the employment of third-country nationals at less favourable wages compared to those applied to German seafarers. This possibility exists with varying degrees in all European second registers. The aim is to "ensure the competitiveness of German merchant ships in the international sphere by favouring the reduction of personnel costs"[68].

The referring court—the labour tribunal of Bremen (*Arbeitsgericht Bremen*)—turned to the ECJ with a preliminary question on the interpretation, among others, of Article 117 of the EEC Treaty. The tribunal argued that the Law establishing the I.S.R. was incompatible with the obligation to implement social protection objectives, including, in its view, the obligation to fight against wage dumping and other distortions of the labour market. The ECJ, on one hand, admitted that Article 117 of the Treaty is not without legal effect, but, on the other hand, recalled its merely programmatic nature and the discretion of the Member States in the choice of measures to improve living and working conditions. Specifically, the ECJ simply dismissed the question by stating that the obligation laid down in Article 117 is not sufficiently precise and unconditional to be relied on by individuals before a national court for their own protection. The ECJ did not dwell on the fact that the coexistence on board the same ship of seafarers who receive very different wages and perform identical tasks is incompatible with the aim of the Union's social policy[69]. The referring court's argument seemed indeed reasonable, given that through the establishment of international registers not only are foreign workers discriminated, but also, indirectly, European workers penalised.

The position of the ECJ appears to be consistent with that of the EU Commission. During the late 1980s and early 1990s, the Commission considered the possibility of establishing an open register for the EU, known as EUROS[70]. However, this proposal never came to fruition[71]. Nevertheless, the Commission did adopt the 'Community guidelines on State aid to maritime transport' (as amended by Communication C(2004)43,58) that support the exemption of shipping companies from certain forms of taxation and social contributions to increase their ability to compete internationally. They obviously include companies that register their ships in international registers[72]. Financially supporting these registers means endorsing their operation and encouraging the establishment of new ones.

68 ECLI:EU:C:1992:130 (*Sloman Neptun*), para. 8.

69 As, on the contrary, advocate general Darmon rightly pointed out. ECLI:EU:C:1992:130 (*Sloman Neptun*), Conclusions of the advocate general, para. 3.

70 Romagnoli, 2006, p. 118.

71 For an analysis of the reasons for the failure of EUROS, see: Fotinopoulou Basurko, 2023, pp. 28 ff.

72 It is true that, to qualify for the benefits, the majority of the workers must be resident in the EU and the company has to show to comply with international and EU safety and working conditions minimum standards. However, some countries within the EU, such as Poland and Romania, are considered labour-supplying countries, as their wages are lower than the EU average and labour law is laxer. Thus, cases of internal social dumping and misuse of freedom of establishment could proliferate.

The EU's position is based on the understanding that the alternative would be to permit the complete flagging out of European ships, which would result in an economic disaster for Europe and its seafarers. It would effectively cede the market to third countries with open registers, leading to crews comprising entirely of residents from labour-supplying countries. The system of second registers and tonnage tax at least guarantees some categories of European seafarers a place in the labour market, since European specialised high-ranking officers are still preferred on board EU-flagged ships.

However, EU policy seems contradictory in this field. On one hand, the EU expresses concern about the diminishing employment opportunities for European seafarers[73] in favour of the massive use of workers from third countries. On the other hand, it encourages and supports the existence of international registers in the EU through the extension of tonnage tax benefits[74].

4. Coping with the Internationalisation of the Maritime Labour Market: Sustainable Solutions

For all the reasons outlined above, the internationalisation of the maritime labour market cannot be tackled by opening European registers. Indeed, the second registers' system is not a sustainable solution from a social and labour perspective, and the EU cannot ignore this matter. The only sustainable solution to the problem of downward international competition in the maritime sector lies in the strengthening of international minimum standards and fostering meaningful social dialogue.

Regarding international minimum standards, it is crucial that the existing conventions are ratified by as many countries as possible. In particular, achieving the large-scale ratification of the MLC could yield multiple benefits, not only in terms of worker protection, but also in ensuring fair and equitable competition among shipowners at a global level. The MLC's implementation is anchored in a port state control system, and its provisions have a universal applicability[75]. Rather than pursuing increased flexibility

[73] The official website of the Directorate-General for Mobility and Transport of the EU Commission opens to this sentence: "The European maritime industry suffers from an increasing lack of European seafarers, in particular officers. […] The main objective of the European maritime policy is to prevent abusive practices on board ships calling at EU ports, improve employment and working conditions for seafarers on board EU-flagged ships, make the maritime profession more attractive and ensure compliance with established training standards." See: <https://transport.ec.europa.eu/transport-modes/maritime/seafarers_en> (accessed 7 June 2023).

[74] Fotinopoulou Basurko, 2017, p. 27.

[75] According to the control system established by the MLC, all ships may be subject to a control, even the ones registered in non-ratifying countries. In fact, the "no more favourable treatment" principle laid down in Article 5(7), states that ships of countries that have ratified the MLC will not be placed at a competitive disadvantage as compared with ships flying the flag of ratifying countries.

of their registers, EU Member States should direct their efforts into securing as many ratifications as possible[76]. To achieve this goal, port authorities, investors, entrepreneurs and trade unions should collaborate, working to influence public opinion on the relevance of this issue and raising its visibility.

Regarding social dialogue, its potential to balance different interests and provide concrete solutions should be valued, especially in the maritime sector, where the ITF holds significant strength and representation. As previously explained, the ITF has an in-depth knowledge of the sector, and it succeeded in providing a minimum wage for workers on ships flying flags of convenience. Ideally, similar achievements could be realised for other seafarers, and the officers' labour market could be divided from that of ordinary seafarers. In general, collective agreements serve as a unique instrument to cope with the maritime sector's challenges. They can be readily modified and updated than legislation and are better suited to distinct submarkets within the maritime labour market. The improvement of working conditions in the maritime sector is only possible through an efficient global social dialogue: ratification of conventions on a global scale is also necessary, but collective autonomy can mitigate negative effects of parties' freedom to select the law governing their employment contracts, particularly when that choice leads to countries with lax control of ships flying their flag[77].

5. Conclusion

The establishment of international registers has aligned working conditions on EU-flagged ships with the inferior standards prevalent on vessels registered in open registers. Moreover, it facilitated wage dumping and discrimination. In this manner, the EU has effectively engaged in a race to the bottom, conforming to the prevailing trend of open registers, when ideally, the process should be the reverse, with European principles extending to third states.

Although the valuation of the law of the seafarers' residential country over the law of the flag is partially consistent with the principle of freedom of ship registration, it should not extend to the point of allowing significantly disparate wages for identical tasks on the same ship. The 'equal pay for work of equal value' principle is enshrined in both the Universal Declaration of Human Rights[78] and ILO Convention No. 111[79]. This princi-

[76] The MLC has received many ratifications, but some important port states are still absent, such as Morocco, whose port of Tanger-Med is in direct competition with many European ports.

[77] Filì, 2007, pp. 783–784; Ruozzi, 2021, p. 212.

[78] United Nations General Assembly, The Universal Declaration of Human Rights (UDHR), New York, 1948, Article 23.

[79] International Labour Organization (ILO), Discrimination Employment and Occupation Convention, No. 111, 25 June 1958.

ple holds even greater significance when the ship bears EU flag. It aligns with various EU provisions, such as Article 157 TEU[80], Directive 2000/78/EC[81], the European Pillar of Social Rights and, in general, the EU's recent focus on social justice and inequalities[82].

Moreover, the aim of second registers does not appear to have been fully achieved. These registers were initially presented as a mean to address the declining competitiveness of the European fleet by replicating the advantages as associated with flags of convenience. Even if they have indeed led to an improvement in competitiveness, it remains more advantageous for a shipowner to register a vessel in a non-European register of a country with a poorly developed labour law[83]. This preference arises because, for the sake of consistency with their legal systems and constitutional principles, EU Member States' legislations often include safeguard clauses aimed at ensuring a minimum level of protection to non-EU workers.

Lastly, in many cases the establishment of second registers was justified by reasons of employment policy[84], but they do not seem to solve the problem of unemployment of EU seafarers. In fact, the vast majority of shipowners can now hire non-EU seafarers while retaining European flags, with the result that the chances of being recruited for EU residents, instead of increasing, have diminished[85].

It is evident that the purported enhancement of EU seafarers' employment opportunities was a simple *ex post* justification[86], and the primary motivations for the establishment of second registers were driven by economic objectives. In essence, the focus of maritime legislators has shifted away from achieving a balance in the relationship between seafarers and shipowners, and instead, their concern primarily revolves around the competitive positioning of the national fleet in the competitive market[87].

In conclusion, EU countries and institutions have justified the introduction of second registers by arguing that the increased flexibility in labour regulations is a lesser evil compared to potential consequences of the internationalisation of the maritime labour

[80] See also the ECJ's case-law on the direct effect of Article 157, lastly confirmed in: CJEU C-624/19 *K. and others c. Tesco Stores Ltd* of 3 June 2021.

[81] Directive of the Council No. 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

[82] The European Pillar of Social Rights Action Plan, <https://www.deepl.com/translator#it/en/Il%20Piano%20d'azione%20del%20Pilastro%20europeo%20dei%20diritti%20sociali%20pu%C3%B2%20essere%20consultato%20al%20seguente%20link%3A> (accessed 7 June 2023).

[83] Basedow also argued in this sense. Basedow, 1990, p. 218.

[84] Consider, for example, the title of the Italian law that established the R.I.: "Urgent provisions for the development of the transport sector and the increase of employment".

[85] See also Firriolo's analysis of the Confitarma data on employment growth in the Italian maritime sector. Firriolo, 2017, pp. 164–165.

[86] Fotinopoulou Basurko, 2017, p. 28.

[87] Ruozzi, 2021, p. 197.

market. However, despite these justifications, the opening of European registers cannot be considered a valid solution to this issue, because it signifies a veritable labour and social deregulation that conflicts with the social objectives of the EU. An alternative approach could involve further development of both public international law and social dialogue. This approach offers the potential to address the challenge of global downward competition without sacrificing seafarers' rights. On one hand, widespread ratification of maritime conventions, primarily the MLC, allows for the establishment of a common baseline of minimum standards to be upheld globally. On the other hand, social dialogue enables the negotiation of balanced arrangements tailored to the various submarkets and allows for rapid adjustments when needed.

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