Implementation of the Maritime Labour Convention in the Netherlands

The Maritime Labour Convention, 2006 (“MLC”) was adopted by the International Labour Organisation (“ILO”) on 23 February 2006. The MLC aims at creating a single, coherent global instrument embodying all up-to-date standards of existing international maritime labour Conventions and Recommendations as well as fundamental principles of other international labour Conventions.\(^1\) The MLC replaces about 68 existing ILO conventions on maritime labour.

After the entry into force of the MLC in the Netherlands on 20 August 2013 it is about time to look into the implementation process of the MLC in the Netherlands and to briefly consider some interesting features in relation to said implementation.

Two legislative proposals to ratify the MLC and to implement the EU Directive based thereon have been submitted to and they were subsequently adopted by the Dutch Parliament.

Key features of the implementation

The regulations of the MLC are divided into five Titles, namely:

1. Minimum requirements for seafarers to work on a ship;
2. Conditions of employment;
3. Accommodation, recreational facilities, food and catering;
4. Health protection, medical care, welfare and social security protection;
5. Compliance and enforcement.

The regulations of the MLC in part have been incorporated into existing laws and in part into a new Act, the Seafarers’ Act (\textit{Wet zeevarenden}), formerly the Maritime Shipping Crew Act (\textit{Zeevaartbemanningswet}).

A significant part of the MLC regulations – in particular Titles 1, 3 and 4 – were already incorporated in the Maritime Shipping Crew Act, now replaced by the Seafarers’ Act. Medical care on board ships (Title 4) was also regulated under special

\(^1\) Maritime Labour Convention, 2006, Preamble.
Dutch laws. The new Seafarers' Act has undergone the necessary adjustments and additional chapters have been added in order to further implement Title 1 and Titles 3 to 5 of the MLC.

Many regulations of Title 2 of the MLC which address the conditions of employment have been incorporated in Articles 7:694 to 7:738 – Section 7.10.12 – of the Dutch Civil Code (“DCC”). In addition, some outdated provisions of the Dutch Commercial Code relating to the employment agreement of the master and seafarers have been updated. Hence, the ratification of the MLC and the implementation of the EU Directive also led to the modernisation of maritime labour law (of the Dutch Commercial Code).

Section 7.10.12 of the DCC
In this section the following matters related to the conditions of employment of seafarers are regulated: i) general provisions; ii) wages; iii) holidays; iv) repatriation; v) compensation in case of shipwreck or other disasters related to the vessel and in case of decease of the seafarer; vi) termination of the seafarer’s employment agreement; vii) the ill seafarer; viii) the employee temporary working on board a vessel; ix) the employment agreement under foreign law; and x) obligations of the shipmanager. Hereafter some noteworthy provisions and amendments thereof will be briefly considered.

In the general provisions it is provided that this section is applicable (only) to seagoing vessels flying the Dutch flag. This restriction did not apply under the former regime of the Dutch Commercial Code of before 20 August 2013. Under the latter regime these provisions of the Dutch Commercial Code always applied provided that Dutch law was applicable.

Also, different from the Dutch Commercial Code, aforementioned section does not make a distinction between the master and the seafarers. ‘Seafarer’ is now the term used – which term however is not defined in said section.

The term ‘seafarers’ employment agreement’ on the other hand is defined; different from what was provided under the Dutch Commercial Code, from this definition it appears that temporary agency work is possible in the maritime shipping sector. This is not self-evident under the MLC, where in principle it is assumed that an employment agreement is concluded between the seafarer and the shipowner. Furthermore, it is notable that said section provides that it is not allowed to agree upon competition clauses with seafarers; and in principle the district judge of the
Rotterdam High Court has exclusive jurisdiction in matters concerning seafarers’ employment agreements (or collective labour agreements). Latter regulation is consistent with the recently presented legislative proposal to concentrate shipping disputes in the Rotterdam High Court.2

The applicable law
A regularly recurring discussion is the question as to the law applicable to the employment agreement with a seafarer. In this respect the European Court of Justice (“ECJ”) in its Case C-384/10 of 15 December 2011 (Voogsgeerd/Navimer) determined that (even in the maritime sector) the law applicable should as much as possible be determined in connection with the country where the employee habitually carries out his work.3 According to the Court this should be interpreted broadly. Specifically to the maritime sector the following factors should be taken into account in determining the law applicable to the contract of employment: the State in which the place is situated from which the employee carries out his transport tasks, receives instructions concerning his tasks and organises his work, and the State in which the place is situated where his work tools are to be found.4

Following on from this it is worth noting that the ECJ in the case Voogsgeerd/Navimer, in determining the law applicable, did not assign any importance to the nationality / flag State of the ship, the so called Lex registrationis. Therefore, the flag of a vessel cannot be equated with the State where the employee carries out his work. This seems obvious in the light of workers’ protection: in case the flag of a vessel would be determinant of the law applicable, a massive rush to the ‘flags of convenience’ would start, which development would detract from the living and working conditions of seafarers on board seagoing vessels. The MLC does in fact not exclude that the law of the flag State is another than the law applicable to the employment agreement.5 This distinction is also found in section 7.10.12 of the DCC, which could lead to remarkable situations in which for instance the employment agreement is on the one hand governed by Dutch law – based on the Rome I Regulation – and on the other hand applicability of section 7.10.12 DCC is excluded due to the vessel not flying the Dutch flag. The question can be raised

---

3 ECJ 15 December 2011, C-384/10 (Voogsgeerd/Navimer).
4 C-384/10 (Voogsgeerd/Navimer), para. 38.
5 See for instance Regulation 2.1 of the MLC.
whether this has been the intention of the legislator or whether this must have been a misunderstanding. As for the rest, it is questionable whether a seafarer in said situation would indeed be worse off. As mentioned above, the existing Dutch (labour) laws and regulations already largely complied with the obligations/standards arising out of the MLC, in particular in the field of social security, labour conditions, medical care and welfare. Besides, it should be borne in mind that in case an employment agreement is governed by Dutch law the same will most probably also be subject to a collective labour agreement, such as the collective labour agreement for commercial shipping. In these collective labour agreements section 7.10.12 DCC has already largely been taken into account.

Conclusion
The implementation process of the MLC in the Netherlands among others led to the (much needed) modernisation of Dutch maritime labour law existing since 1838. The implementation also led to an increased accessibility of this niche of labour law by incorporating the new regulations in Book 7 DCC. In general, the MLC improves the position of seafarers by clearly regulating some important issues. However, as follows from the above there are some issues, such as the question who should be deemed as employer and the question as to the applicable law to the employment agreement with a seafarer, which continue to be regularly recurring discussion in the jurisprudence. Fact is that due to this, maritime labour law remains an interesting and challenging field of law.

Rotterdam, February 2016

Giulia Argento and Charlotte van Steenderen
Van Steenderen MainportLawyers, Rotterdam