



Questions & Answers

Maritime Labour Convention (MLC)

When does the Maritime Labour Convention (MLC) enter into effect?

The MLC will enter into force on August 20th 2013 worldwide. From that date on the MLC, 2006, applies to all seagoing vessels of countries that have ratified this Convention and to all foreign vessels in ports of those countries.

To which types of vessel does the MLC apply?

The MLC applies to all Dutch seagoing vessels with the exception of:

- fishing vessels;
- vessels which sail exclusively on Dutch Inland Waterways or waters within or closely bordering on protected waters;
- unmanned vessels without means of propulsion;
- warships and marine auxiliary vessels;
- lifeboats;
- undecked fishing vessels which do not as a rule operate out of sight of the Dutch coast;
- pleasure craft.

Which seagoing vessels are required to have an Maritime Labour Certificate on board?

Vessels of 500 GT and above which make international voyages must hold an Maritime Labour Certificate (ML Certificate) from August 20th 2013 on.

Although vessels of up to 500 GT on international voyages are not obliged to have the certificate on board, the ILT recommends that shipowners nevertheless have their vessels certificated in order to prevent increased pressure of inspection by foreign states' port inspection authorities.

Will all Dutch seagoing vessels be able to obtain an ML-certificate in good time?

It is expected that all Dutch seagoing vessels will be able to obtain an ML-certificate before August 20th 2013. This work can commence as soon as all the relevant Acts and Regulations have been published in the Bulletin of Acts and Decrees. The last part of the legislation has been published at the begin of November 2012.

One important precondition has already been met: the Implementation Act was published on 31 August 2011 (Bulletin of Acts and Decrees 2011 no. 394) and the MLC was ratified by the Netherlands on December 2011.

Who will issue the ML-certificates?

The ML-certificates will be issued by mandated recognized organizations.

What is a DMLC (Declaration of Maritime Labour Compliance)?

A DMLC forms a mandatory part of the ML-certificate and is made up of two parts:

1. Part I of the Declaration of Maritime Labour Compliance summarises the Articles in the Act implementing the MLC in the Netherlands on a section by section basis.
2. In Part II of the Declaration of Maritime Labour Compliance the shipowner describes the procedures through which it has been ensured that the vessel meets the requirements of the Convention.

The ML-certificate can only be issued if the two Declarations have been drawn up and the ship has been successfully inspected. They form a mandatory component of the certificate.

Where can the DMLC, part I, be applied for?

The DMLC, part I, can be applied for from the ILT.

From which date on may applications for a DMLC, part I, be submitted?

The DMLC, part I, is available from ILT/Shipping from 1 November 2012 onwards.

Is everyone on board a seafarer?

Everyone who works on board is a seafarer, except:

- passengers;
- family members or relatives of seafarers who are travelling with them;
- members of the armed forces, inspectors and pilots;
- persons who are on board solely within a harbour or at a harbour facility;
- other persons whose activities do not form part of the normal activities on board the vessel.

Who can decide whether a person is a seafarer or not?

It is possible to request a decision from the Minister whether a person is or is not a seafarer according to this Act. The shipowner or a person who is or who will be working aboard a vessel may submit such a request to the Minister.

To assist the Minister in this process, the representative organizations of shipowners and seafarers have established a Committee to advise the Minister on this point. Shipowners or other interested persons are advised to ask the committee whether a person carrying out a specified function on board is a seafarer or not through their representative organizations, if this is not specifically included in the list above. If, in such a case, the shipowner wishes to include a category of persons to the list of exceptions, the shipowner is advised to submit such a case to the Committee. If the Committee agrees with the shipowner, the Minister will be advised and the Regulation Seafarers may be adapted in this respect by the Minister

What are the most significant changes to Dutch legislation due to implementation of the MLC?*The Manning Act*

The Manning Act (*Zeevaartbemanningswet*) will implement a significant portion of the MLC, such as the obligations and responsibilities of the ship owner. The name will be changed to the Seafarers Act (*Wet Zeevarenden*).

This Act also includes the requirements relating to manning, training, accommodation and provision of food. All these subjects were previously part of the old Seagoing Vessels Manning Act and the Commercial Code.

Civil Code

The Netherlands Civil Code includes a section on Employment Contracts at Sea. The existing Articles on this topic from the Commercial Code will be transferred to this section of the Civil Code. These have been updated and brought into line with the MLC where necessary. Their inclusion in the Civil Code is logical since "normal" contracts of employment and contracts for temporary employment are also dealt with there.

The Occupational Safety & Health Act

Article 16 Sections 7 and 9 of the *Occupational Safety & Health Act* have been amended so as to offer the required protection to all seafarers, including not only employees but also the self-employed, working owners and volunteers.

The Placement of Personnel by Intermediaries Act

Sections 2 and 3 of the Placement of Personnel by Intermediaries Act (*Wet Allocatie Arbeidskrachten door Intermediairs* or *Waadi*) applies to work carried out on Dutch seagoing vessels. This expansion of the scope of the *Waadi* regulates temporary agency work on board Dutch seagoing vessels.

Different definitions of "seafarer" in the Seafarers Act and in the Civil Code

Why is the definition of "seafarer" in the Seafarers Act different to that in the Civil Code?

The basic principles of the Seafarers Act differ from those of the Civil Code. The term "seafarer" has a more limited scope in the Civil Code than in the Seafarers Act.

The Chapter in the Civil Code about contracts of employment deals with seafarers with a seafarers employment agreement.

In the Seafarers Act a seafarer is a natural person who carries out activities on a seagoing vessel in any capacity. For the purposes of the Seafarers Act it is not significant whether a seafarer is carrying out work on board by virtue of a seafarers employment agreement or, for example, as a self-employed person. The rules relating to accommodation and provision of food also apply to all seafarers.

Regulations relating to contracts of employment other than Maritime contracts of employment

Why does the Civil Code deal with contracts of employment other than seafarers employment agreements?

It is possible that work on board is temporarily carried out on the basis of an ordinary contract of employment. There are also seafarers who work as self-employed persons, for example under what is sometimes called an "engagement contract".

Because work on board entails a special working environment, a number of the Articles dealing with the seafarers employment agreement also apply *mutatis mutandis* to the normal contract of employment as well as other types of contract, such as an engagement contract. In this way additional protection is provided to persons working on board on contracts other than the seafarers employment agreement. This relates to the right to repatriation and the associated reimbursement of costs.

These stipulations in the Civil Code also apply *mutatis mutandis* where foreign law applies to a normal or other contract of employment.

How is supervision to be carried out? What are the consequences of failure to comply with the MLC?

There are three components of the supervisory arrangements:

1. *Obligations of flag states*

These are the inspections of seagoing vessels sailing under the Dutch flag, **preceding** the issuing of the MLC-certificate and also the enforcement inspections **after** August 20th 2013. The recognised organizations will carry out these inspections and issue the certificates. The ILT will monitor these activities.

2. *Obligations of port states*

These are the inspections of seagoing vessels under foreign flags in ports in the Netherlands. From August 20th 2013 on, these may be executed in countries that have ratified this Convention. Ships from countries that have not ratified the MLC may also be inspected. In this way it is achieved that all ships must satisfy the requirements of the MLC.

3. *Investigation of complaints*

This refers to investigations of complaints by seafarers on board Dutch vessels or by seafarers on board vessels under a foreign flag in a Dutch port. Complaints may be submitted from August 20th 2013 on.

Which consequences will non-compliance with the MLC lead to?

If a ship does not comply with the requirements of the MLC during a flag state or a port state inspection, measures shall be taken. These measures shall be included in a rectification plan. In case of serious deficiencies, the ship may be detained.

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