

Summary and report on the communications and debates in the workshop
entitled:

Luxury yachting: applicable law, and employment potential¹

by

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The workshop we were involved in aimed to clarify how the luxury yachting sector can be characterised, with regard to applicable law, employment potential, and economic impact.

The luxury yachting activity has been enjoying exceptional development over the last 10 years, and is presently growing at a rate of six per cent per year. According to certain studies, the world fleet will number 8000 units of 24m or more by the year 2010, and about half of them spend the summer season in the Mediterranean. Thanks to its privileged location, its cultural diversity and reputation for good food, this area of the globe will be frequented by all the ships at least once, even if there is a drastic lack of mooring space.

In view of the economic issues and employment potential associated with this activity, there was a need to bring together yacht captains, University researchers, jurists, associations, and trade union representatives in order to explore this subject and share experience and knowledge. This work has been made possible by the Observatory of Seafarers Rights and I will therefore attempt to summarise the numerous questions that have been raised.

The first difficulty encountered by the workshop was to agree on the subject matter and its boundaries. It was obvious that we could not be content with the generally accepted definition of yachting as a sporting and leisure activity; nor could we extend our discussions to all the activities of this sector.

The very term 'plaisance' ('leisure yachting ') in French can be confusing, because it is often tricky to determine what refers to sailing, motor-boating, yachting, or passenger transport. Moreover, a large number of boats have multiple activities (which is the case, for example, of 50% of yachts of more than 30 m in length).

In the British way of thinking, the distinctions are more clearly made, with the words « yachting » being used for everything that is professional, and « leisure » or « boating » referring to the boats owned by you or I.

To be pragmatic, we have used the term « grande plaisance » in French to mean yachts of more than 24m overall, carrying fewer than 12 passengers, not registered with ENIM, that is to say, sailing under what is commonly known as a 'red enseign'.

Even if one of the objectives of the RIF is to bring back some yachts under the control of the French authorities, at the present time all professional yachts are under foreign flags. The influence of this register on the yachting world has not nor cannot really be determined and will therefore not be the object of further discussion.

¹ Translated by James SMITH

So that our report on the workshop « Large-scale yachting: applicable law, and employment potential ' can be as complete as possible, we will deal with aspects which generally raise a lot of questions, to which the people present, with their very varied experience, were able to provide some answers during the exchanges.

The report on the workshop will focus on three issues:

- 1) Qualifications, employment and benefits to the economy, and the close links between the three.
- 2) Questions regarding social regulations, technology and life on board vessels flying a 'red ensign', and finally,
- 3) The development of jurisprudence in the event of a conflict or breach of contract.

1) Qualifications, employment and economic activity

In a field which is largely dominated by the British and by the English language, as is the rest of the maritime world, there are translation problems which do not always do justice to French qualifications, or which can create some confusion.

Clearly, the translation into English of what was the « Brevet de Patron de Petite Navigation Côtière » (BPPN) (small boat coastal sailing skipper's ticket) could hardly favour French captains, compared to the more attractive British qualification of « Yacht Master ».

The qualifications delivered by our schools and training centres have had to adapt and adopt the word « yacht » in their titles. The aim of this translation was to ensure that those who held these qualifications would not be too quickly depreciated by foreign shipowners.

The repercussions can be very significant. In fact, it is not really a banal linguistic problem, because it conceals a completely different reality. It should be realised, quite simply, that a badly interpreted or understood qualification can hinder the recruitment of a qualified person.

Since the workshop was about professional yachting and employment potential, it was important to underline this initial problem and the fact that when a French captain is placed on a yacht, and he is able to maintain a confident relationship with his shipowner, there will be further benefits for the economy and for employment. These horizontal benefits are sometimes under-estimated.

In fact, when a French captain embarks on a yacht, this usually means, in the vast majority of cases, that the chief mate, chief engineer, second engineer, and ABs, as the needs of the vessel may be, will also be French.

So, the recruitment of a French captain on a yacht will not only have an effect on the engagement of the crew, but also on a series of connected professions, in other words, it will act on several sectors of the economy, general suppliers (receptions, florists, and delicatessens...) or shipyards (annual wintering, interior decoration, vessel refit, watchmen, painters, hull-making, carpenters, upholsterers, carpeting, cabinet-makers, boilermakers, and all sorts of other tradesmen...).

A 35 m luxury unit will spend on average more than €1 million a year on activities, which concern primary, secondary and tertiary sectors, as well as a new sector, which some professionals have coined 'quartary', which has to do with very high technology equipment.

The impact on the economy and on employment of professional yachting budgets cannot and must not be neglected, because shipowners are involved whose purchasing power is often very difficult to imagine by any ordinary mortal. This purchasing power can, for certain yacht owners, be derived from what might be termed a « no limit » budget (according to Jean-Marie LACARRIERE, general secretary of GEPY - professional yachting crews association).

As for the total number of crewmembers on board yachts in the Mediterranean, it has been estimated at 3500 people, but these posts, until now, have been very largely occupied by British seafarers.

British seafarers have a language advantage, and have also been generally better trained for giving quality service on board. Where qualifications are concerned, those delivered to professional yachting crews are similar or equivalent to those issued to merchant seafarers. On the other hand, it is often emphasised that work on board yachts requires both know-how and 'know-how to be'.

One has to be conscious of the fact that on board personnel, whatever might be his or her rank combines the work of a seafarer with that of hotelier. Personal presentation and general attitude required must meet much higher demands.

On board a luxury yacht, the work of the captain is not limited to driving a vessel, but extends to commercial operations, and the reception of guests... His role can be assimilated to that of a hotel director.

In the opinion of certain yachting professionals, seafarers coming from the merchant Navy should be made more aware of the 'service' aspect on board yachts. A training module for service on board such yachts should be seriously considered.

This then is a brief glance at the situation with regard to employment potential and training. We will now turn to what concerns on board living conditions.

2) Technical regulations and living conditions on yachts under the « Red Ensign Group »

At the present time, more than 90% of yachts are under the « Red Ensign Group », that is to say, under British second register such as Jersey, the Virgin Islands, or some other flag, which may well have been declared a flag of convenience by the ITF (Bermuda, Cayman Islands, Gibraltar) (Yves REYNAUD, ITF Inspector).

This « Red Ensign Group » is often considered to have shortcomings where all social and technical questions are concerned, since in theory no social cover, nor any aptitude qualification, are required for seafarers, nor are there any obligations with regard to the technical requirements for the vessel. However, we will immediately have to modify such preconceived ideas.

With regard to fiscal and social considerations :

The aim here is not to expose the advantages and disadvantages of each flag in the « Red Ensign Group », but it should be remarked that within this category, there are various levels, which make one flag more or less demanding and/or attractive than another.

Thus, yacht owners have been known to pass from one ‘red ensign’ to another in the « Red Ensign Group », in order to suit their particular interests.

The general tendency seems to be that seafarers’ salaries are determined according to a market price rather than the kind of wage scale that you find in France under the ENIM scheme, for example.

The total salary includes neither social contributions nor any subscriptions of any kind. It will be up to the seafarer to choose a health insurance policy or social cover, or to choose not to.

Similarly, it is up to him to declare his earnings to the tax authorities or not, with the risk that this entails.

Finally, it should be noted that it is definitely possible for a seafarer sailing under a flag of the Red Ensign Group to subscribe to ENIM.

In so doing, his salary will be reduced, but he will be able to benefit from the rights and advantages granted by the aforementioned institution.

In order to qualify, the seafarer will need to resort to a private agency with company status who will act as interface with ENIM.

With regard to his category according to the ENIM scale, the seafarer is free to underevaluate it in order to pay lower contributions.

Another alternative for a seafarer who has a berth on a foreign-flag ship is to subscribe to the French Expatriate Fund, whose social system carries many advantages.

Overall, the workshop emphasized that actively employed seafarers needed to realize how important it was to have insurance cover or to subscribe to a public or private institution. Seafarers embarked on yachts sometimes get drawn into the general atmosphere of luxury and spend more than they should without thinking about social contributions, which could eventually put them in difficulty.

With regard to technical standards and to the qualifications of onboard personnel :

The question of technical standards has been dealt with by the « UK Maritime and Coastguard Agency », the equivalent of our Maritime Affairs, in a code which includes the norms and standards of ships’ safety under a flag of the ‘Red Ensign Group’.

This code applies to yachts sailing under a red ensign who :

- Are commercially exploited for sport or pleasure, rather than reserved for private use;
- Are at least 24 metres long (measured at the load line), or have a gross tonnage of 150 tons or more if they were built after July 21st 1968 (other codes existing for boats of less than 24 metres),
- Carry no cargo,
- Take on board no more than 12 passengers.

Each time the vessel is used for a commercial charter activity, it must comply with the Code.

One may well wonder what value these standards have and whether they are respected, seeing that such vessels are usually for private, rather than commercial use in the Mediterranean, and seem to avoid all controls by competent authorities.

The answer is perhaps surprising, but in reality these standards are particularly well respected, for in practice insurance companies insist on the vessel's strict compliance with the MCA Code in their contracts, at the risk of withdrawing cover in the event of an accident.

As a result, given the very high value of such yachts, owners rarely take the risk of sailing with a ship that it is not covered by insurance.

Moreover, compliance with these MCA standards, first by the boat-builder, then by the owner, is a guarantee of good quality and reliability, not just during construction by the boat-yards, but also when the ship is put on the market by brokers.

The reasoning is really rather similar to that which applies to seafarers' qualifications. Nothing is specified for these yachts, but fleet captains or recruitment agencies will refuse to embark a person who does not have the required qualifications, since, in this case also, insurance companies can be very demanding.

With regard to onboard living conditions :

It seems the general tendency, however extreme and antagonistic it may be, is to either idealize or criticize the work and onboard living conditions on yachts.

In a nutshell, certain people want to work on a yacht because they fondly believe that the living conditions will be similar to those of the owners ; whereas, at the other extreme, others think that sailing under the Red Ensign is tantamount to being systematically exploited in a pseudo-legal context.

Even if there have indeed been cases of seafarers coming across very privileged berths or of others who have been in miserable conflicts with their employers, there really needs to be a more measured view : a large number of jobs on board yachts, despite the very particular work-place, result in very normal working relations.

The last issue with regard to life on board is increasingly the systematic presence of female employees. The larger the yacht, the more women work on board, and the higher the rank they may occupy. In recent years, the role of ladies is no longer limited to certain domestic tasks, but now concerns work on deck or in the engine-room.

Having considered the social regulations, and living and safety conditions on board, we will now examine the problems of applicable law in the event of a claim.

With regard to claims, we will limit ourselves to considering only those that result from a breach of a work contract.

With respect to other kinds of conflicts, such as those that concern social security or fiscal law, the jurisprudence in such matters is little known or not at all. The problems of applicable

law were addressed on the first day, in plenary session. The question is a somewhat complex one, so we have of course raised it again in this workshop on luxury yachting.

While conflicts of laws and jurisdictions are common in general maritime law, they appear systematically in claims for breach of contract where yachts are concerned.

The issue is indeed a very sensitive one, because it will systematically involve a ship with a foreign flag, the property of a company or owner of a different nationality, with work contracts and rights which can also be foreign.

In order not to labour the point, I would invite the reader who wants to make a detailed analysis to refer to the communications of professors Pierre BONASSIES and Patrick CHAUMETTE and to that of Olivier RAISON, lawyer.

In order to give an idea of the general tendency, the various communications testify to the fact that French jurisprudence has certainly changed.

On the one hand, the number of claims has greatly increased ; on the other, we get further and further away, and not too soon, from the timid interpretations by industry officials and law-courts of the 1806 Council of State decision, which clearly over-protected the ship's flag.

In referring to this decision, the authorities have until now been extremely hesitant to act on problems which concerned the internal relations on board, as long as the latter did not disturb public order in the port, while limiting themselves to a very narrow definition of public order.

Such restrictive interpretations of public order, in any case, excluded contractual relations from their field of competence.

Henceforth, given the evolution of hearts and minds, it appears that considerations of national or international public order could well lead to the annulment of work contracts that are obviously unjust or degrading.

Despite the very recent character of jurisprudence on the subject, we were then able to discuss that once the contract is annulled, particularly by labour courts, judges manage to link the contract to French law by means of an ad hoc interpretation. The basis for such decisions is not necessarily found in specific texts, but by reference to the judge's own legal culture.

From these fundamentally positive advances, we can clearly see that the recourse to national solutions to solve problems of an international nature is not entirely satisfactory.

Those countries that establish such daring jurisprudence may then see fewer ships calling at their ports, due to the yacht owners' fear of an arrest for claims that do not appear in contracts. Thus certain stopovers would be avoided, the owners finding themselves a long way from their own traditions or legal culture.

As we have also seen in the first part, the economic benefits to be reaped from large-scale yachting at a regional level are considerable. There is fierce competition in the industry with the Italians, in particular, and any decrease in the number of vessels could have repercussions across the board on all the activities concerned.

It would therefore be a good thing, although somewhat wishful thinking, that a sectoral negotiation be set up between social partners and vessel-owners within the framework of an international conference.

More realistically, it seems difficult to imagine that such negotiations might take place in the near future, since even if large-scale yachting is a growth industry, its activity is limited from the regional point of view. Nevertheless, it is regrettable that this be so, since such agreements would give a clear framework for establishing the rights and obligations of all concerned, as well as minimum social conditions which would give both vessel-owners and seafarers a larger amount of legal certainty.