Introduction and background

On Wednesday 17th May, the yachting associations PYA, GEPY and Italian Yacht Masters organised an invited panel of experts from the French government, ENIM and the University of Nantes to address the yachting industry at the Yacht Club de Monaco’s Captains’ Forum Event.

The background to this decree is to enact a French law as required by ratified international convention ‘The Maritime Labour Convention (MLC)’ regulated by the International Labour Organisation (ILO). MLC has also been issued under a EU Directive. This binds the French Government in common purpose with all other states in the world. ILO and the EU will take legal action against France, if they do not bring their social security laws in line with the mandatory requirements of the Maritime Labour Convention (MLC).

The aim of the seminar was to seek explanation of the background to this new law, the legal application and tax implications for seafarers and owners in the large commercial yacht sector based and/or tax resident in France or French Territories, and to test the practical aspects of implementing the decree with the invited panellists.

The seminar was attended by around 400 Captains, crew and shore-based professionals, it was clear that this is an important subject the yachting industry is universally passionate about. It was also clear that there had been poor consultation with the maritime industry prior to the decree being issued.

The Monaco Yacht Club provided the perfect venue to host the event, and generously welcomed guests to a drinks reception on the stunning terrace after the seminar.

The discussion was expertly chaired by Norma Trease, who kept everything running smoothly and conducted the debate between French and English.

Panelists

The speakers that were invited by the three associations to participate were:

- Frédérique Ehrstein – Assistant director of the Maritime Affairs department of Nice (DAM)
- Professor Patrick Chaumette - Lecturer at Nantes University, specialising in Maritime Social law and Mariners’ rights
- Arnaud Fredefont - Maritime Affairs Department
- Mr Jérôme Heilikman – Maritime lawyer for ENIM (Mariners’ Social Security Organisation), and the founder of ‘Legisplaisance’, an association which deals with the legal, economic and fiscal areas of the maritime sector.

This formed the expert panel of representatives for the French government.

There were also representatives from the three major associations for Superyacht crew:

- Captain Jacques Conzales - President of GEPY
- Captain Gino Battaglia – President of Italian Yacht Masters
- Captain Andrew Schofield – President of the Professional Yachting Association

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Opening remarks from the Chairwoman

Norma Trease opened the seminar by thanking Bernard d’Allessandri for the honour of being invited to Yacht Club de Monaco to hold the event. This seminar was the first time that representatives from the different maritime departments had come together, and provided an opportunity for them to share information and learn from each other.

Norma reminded the audience that the law (loi) is not final yet, and that we shouldn’t be afraid of it – the end goal is to ensure that the social rights of maritime workers are protected and that they receive the same coverage as the on-shore French workforce. For some seafarers, this will now make retirement and access to the excellent French health system possible.

Norma highlighted that this seminar, and its excellent turnout not only showed that communication within the yachting community was very strong, but was also indicative that the associations of PYA, GEPY and IYM were doing their best to look after their members.
The speakers were then introduced, who proceeded to present a summary of the decree.

Professor Chaumet - “La protection sociale des gens de mer”

Professor Chaumet explained that the purpose of the decree was to protect seafarers in an international context. Three conventions were adopted to this effect before, but all failed because the seafarers were attached to their vessel, and therefore its flag.

Between 2006 and 2001, the Maritime Convention reworked these laws to put in place a more complex mechanism.

The professor then outlined the scope of the decree:

Rule 4.5 states that seafarers must have the same rights as workers on land. Seafarers will be entitled to a single state, and will be affiliated to the state in which they are resident.

How is the residence status of the seafarer determined?
- Where their family resides
- Where they spend the most time
- Where their vessel is mainly based

The flag state is required to provide a minimum level of social protection for seafarers.
- Legislation could be associated with the flag state
- European law (April 1984) coordinated the various European states
- Currently, even if the seafarer resides in France, the seafarer working on a Maltese flagged vessel will be protected by Malta.
- Each seafarer will have a maritime contract regulated by the Maritime Labour Convention (MLC).
- MLC applies to all European states.
- Denmark, Philippines and many other ratifying states were asked what they provide for their seaman citizens working aboard in Spain there was a first meeting and an article published.
- The port authorities do not control MLC but the flag state must ensure that the seafarer is protected.
- These requirements will make progress in the obligation of flag states to ensure that seafarers have social protection in compliance with maritime social law
- The French degree from July 2013 (similar in Germany and Spain)
Mr. Arnaud Freedefont - Maritime Affairs Department

Mr Freedefont acknowledged that although France has chosen to implement the decree, it may not be so easy in practice. The Ministry is aware that there are many questions that have been raised, but that was why they agreed to attend this event and work on the practicalities. He stated that the new decree was an important step for the industry.

The representatives have drawn attention to the validity of ships and seafarers which compose an important industry on the Riviera.

The new government will look at the decree on a both political and technical level, and will endeavour to coordinate regulations across Europe. France will be watching how Spain and Italy go about incorporating MLC into their laws. He went on to note that:

- There are compulsory aspects of MLC that have to be enacted.
  - Mandatory skills sets
  - Old age planning / retirement
- It could be that Seafarers must have three months on French soil to qualify for French social coverage.
- Yacht owners may decide to not hire French seafarers to avoid paying French social charges (which is not the spirit of the law)
- The seafarer may select the state where he/she can have the best social coverage. There is further work needs to be done here and nothing is based on nationality.

Mr Jérôme Heilikman – maritime lawyer for ENIM

Mr Heilikman explained to the audience that ENIM was a compulsory social scheme developed to protect the welfare of Seafarers either. The scheme will cover its members for many situations including maternity pay, accidents, death or disability.

For example, the seafarer would be compensated 66.66% of a flat rate wage in the case of an accident at sea, 50% for health cover or 90% for maternity or paternity leave.

In order to apply for ENIM, the seafarer’s employer needs to complete a form on the ENIM website. The seafarer needs to complete a document and provide proof of nationality.

The employer must declare its crew, sending each month’s payslips showing social contributions to the state.
Speakers - In Summary and PYA comment

The conclusion drawn by PYA, GEPY and IYM and other sources reporting on the discussion is that although ENIM are prepared to engage with the large yacht sector and potentially will consult on the application policy to assist industry, they are not planning to move the deadline from 1st July 2017. However, it was acknowledged that the authorities are unlikely to be in a position to effectively monitor social security payments on this date and are currently working on the procedure to be followed. Further information will no doubt follow.

ENIM have also yet to publish the scales (percentages of pay) of social charges that will be applied to French resident seafarers. It is likely that these will be based on average salary bands within ranks e.g. Captain. Note that France has operated a second registry (RIF) for several years that include French registered super yachts (currently 36) and their crews are fully integrated into the French SG system via ENIM. This may provide a clue to how this new law will be applied!

The three Crew Associations (GEPY, PYA, IYM) intend to offer their services to ENIM to assist them in gaining better understanding of employment in the large yacht sector. It is hoped that this will allow some flexibility in the application and management of seafarer social charges in the future.

Questions and Answer session

At the seminar held last week the then followed a question and answer session open to the audience that saw many pertinent questions raised. These covered such questions as:

- Application - in terms of whether Private yachts are affected? The answer was that there is no precedent to exempt private vessels as MLC is about seafarer’s rights and welfare.
- The situation of older seafarers and how this will ‘benefit’ them in terms of pension and health coverage.
- How this will affect the health insurance cover currently provided by most employers for crew?
- There were several questions and statements from individuals that highlighted the economic impact that the decree could have if large Social Charges were levied on international owners in France.

A table of the questions and answers can be found on an Annexe to this Report for further information to members.
Other actions taking place

The PYA and GEPY in partnership with other French associations in the super yacht sector have written a joint letter to both ENIM and Maritime Affaires some weeks ago protesting on the application of this decree to yachting. Separately several owners associations and organisations have instructed legal action challenging against its implementation on the grounds of excessive powers. *This has all taken place during the recent Presidential elections so perhaps somewhat difficult to get the politicians attention whether you’re lobbying on behalf of industry or as a French civil servant.*

**Closing Comments made by Crew Associations Presidents**

**Captain Andrew Schofield**, President, Professional Yachting Association:

“When MLC was ratified, it was billed as a seafarers bill of rights but it is also for owners. We need more engagement and more talking and working out because no one wants to break up what we have now. All of the Associations will be fully engaged”

**Captain Jacques Conzales**, President of GEPY and Fleet Manager:

“We wanted to talk about this decree and its interpretation. Thanks to the French ministry for coming tonight and for explaining matters. This means that the ministry’s door is wide open but you can count on us to provide feedback to the new government to help them make the best result. We still have a lot of work to do and we must be constructive together. Thanks to all of you for your participation”

**Captain Gino Battaglia** President, Italian Yacht Masters:

“We are all worried and we tried to contact our government about the issues affecting our seafarers. We need to protect the future of our young seafarers and the future of the industry. There is a lot of money at stake. We are happy to work with the other Associations here tonight and together we have more strength.”

**END OF TRI ASSOCIATION BULLETIN**

**FURTHER INFORMATION TO FOLLOW FOR MEMBERS WHEN KNOWN**