

ROMANIA - Challenges and dilemmas arising from the new maritime labour regulations, especially for seafarer supply agencies (crewing agencies)

In 2018, EU institutions adopted Directive no. 2018/131¹, aiming to improve the working conditions, health and safety and social protection of workers in the cross-border maritime transport sector, predominantly relating to the cross-border sector and to ships operating under the flags of different Member States.

On 19 April 2022, Romania transposed this Directive through G.E.O. no. 50/2022², which repealed previous Romanian legislation in this field, namely G.D. no. 83/2003².

The new law aims to establish an effective system of financial security to protect the rights of seafarers in the event of their abandonment, as well as to provide compensation for contractual claims in the event of the death or long-term disability of seafarers as a result of an accident at work, occupational disease or other occupational risk.

G.E.O. no. 50/2022 applies to all seafarers aboard vessels flying the Romanian flag, both public or privately owned, and who regularly carry out commercial activities.

In this article, we aim to analyse **(i)** the challenges faced by seafarer supply agencies, **(ii)** the minimum content of the individual employment agreement, and **(iii)** the main obligations of the owners of vessels flying the Romanian flag.

I. The challenges faced by seafarer supply agencies

While Directive no. 2018/131 does not include additional provisions on the recruitment and placement of seafarers, G.E.O. 50/2022 introduces new regulations expressly providing that **the recruitment and placement of seafarers can be done only by seafarer supply agencies**, the conditions for their authorisation being more restrictive than those under the previous law, namely G.D. no. 83/2003.

In this sense, one can observe the **negative impact that the provisions of G.E.O. no. 50/2022 have had on seafarer supply companies**, which is reflected by the decreased number of the authorised companies mentioned in the list published by the Romanian Naval Authority regarding the authorised companies in February 2022 (before the entry into force of G.E.O. no. 50/2022) compared to the list from August 2022 (after the entry into force of G.E.O. no. 50/2022).

This negative impact on navigator supply providers has mainly been generated by the unpredictability and technicalities of the new legislation, given the following factors:

- the relatively short deadline for re-authorisation, considering the validity of previous authorisations of 5 years from the date of issue, subject to annual reconfirmation;
- and
- additional and much more restrictive and burdensome conditions that must be fulfilled.

A. Deadline for obtaining a new licence for the recruitment and placement of seafarers

The first issue arising from the legislative transition is the automatic expiry of the previous licence for the recruitment and placement of seafarers, regardless of the effective validity period of the licences.

¹ Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014, published in the Official Journal of the European Union no. L 22/28 dated 26.01.2018.

² Government Decision no. 83/2003 on the licencing of companies that provide services for the selection and placement of maritime or river seafarers on Romanian or foreign flag-bearing vessels, as well as the establishment of financial security measures in case of abandonment outside Romania, published in the Romanian Official Gazette no. 84 dated 11.02.2003.

Thus, **licences to provide the services of the recruitment and placement of seafarers** issued based on prior Romanian legislation **will remain valid until (i) the expiry of the terms of validity of the insurance policies, or (ii) for a maximum of 180 days from the date of entry into force of G.E.O. no. 50/2022 (i.e., 16 October 2022)**, whichever date applies first.

In this respect, GEO no. 50/2022 provides that during the term between the new legislation entered into force (*on 19 April 2022*) and the expiration of the current licence, seafarer supply agencies have **the obligation to submit the necessary documentation to the Romanian Naval Authority**.

As under previous legislation, the licence is valid for **maximum period of 5 years**, with the obligation of the seafarer supply agency to request an **annual renewal**.

B. New requirements to obtain a licence for seafarer supply agencies

G.E.O. no. 50/2022 provides additional requirements for companies acting as seafarer supply agencies to be licenced by the Romanian Naval Authority, such as:

- **to have as its main activity NACE Code 7810 - “Activities of employment placement agencies”;**
- the coordinator of the activity of the recruitment and placement of seafarers must have qualification in the maritime field, minimum maritime knowledge and experience with the vessels to which G.E.O. no. 50/2022 applies, proven by educational documents and boarding certificates;
- to submit to the Romanian Naval Authority a pre-contractual form or a copy of the brokerage agreement concluded with the shipowner, which, compared to the previous legislation, must expressly state all the vessels upon which seafarer recruitment and placement services will be carried out and which must be made available to the Romanian Naval Authority both in original and in copy, for certification according to the original;
- to provide proof of job offers sent by shipowners;
- to submit to the Romanian Naval Authority a copy of the financial guarantee concluded by the shipowner, for all ships where seafarer supply agencies place personnel, which must cover the repatriation and pecuniary losses of the seafarers;
- to submit to the Romanian Naval Authority a copy of the shipowner's financial guarantee, for all ships where seafarer supply agencies place personnel, which must cover the repatriation and pecuniary losses of the seafarers.

C. Other issues arising in practice due to the vague nature of the provisions of G.E.O. no. 50/2022

G.E.O. no. 50/2022 may lead to certain issues in practice, as several newly introduced concepts are not defined and several provisions are open to interpretation.

For example, G.E.O. no. 50/2022 **(i)** does not specify what the activities of the recruitment and placement of seafarers consist of, merely stating that seafarer supply agencies may carry out such activities based on a license issued by the Romanian Naval Authority, **(ii)** nor does it clearly state whether it applies to both seafarers aboard Romanian and foreign flag-bearing vessels.

D. Liability for seafarer supply agencies

G.E.O. no. 50/2022 provides several administrative fines, the highest being between RON 30,000 and RON 50,000 (*approx. EUR 6,000 and EUR 10,000*) for:

- performing the activities of the recruitment and placement of seafarers without obtaining the seafarer supply license from the Romanian Naval Authority;
- performing the activities of the recruitment and placement of seafarers by a seafarer supply agency without holding its own financial guarantee;

- performing the activities of the recruitment and placement of seafarers before the submission to the Romanian Naval Authority by the seafarer supply agency of any new brokerage agreement concluded with a shipowner and a copy of the financial guarantee;
- non-compliance with the obligation to establish and reconstitute a financial guarantee.

The above breaches may also be sanctioned with the withdrawal of the licence to provide seafarers.

In the event of withdrawal of the licence, the seafarer supply company remains responsible for all seafarers who have a valid contract with it, for the following aspects:

- outstanding wages and other rights owed by the shipowner to the seafarer, established by the individual employment agreement, the applicable collective labour agreement and/or the national legislation in force, limited to 4 months of their non-payment;
- all expenses reasonably borne by the seafarer, including the cost of repatriation;
- a seafarer's financial losses due to the fact that the seafarer supply agency or the shipowner did not fulfil its obligations in accordance with the seafarer's individual employment agreement.

II. The minimum content of the individual employment agreement

For seafarers who are Romanian citizens, G.E.O. no. 50/2022 sets **the minimum content of the individual employment agreement** signed by both the seafarer and the shipowner or a representative of the shipowner, regardless of the flag of the ship, namely:

- the full name of the seafarer, the date of birth or age, as well as the place of birth;
- the name and address of the shipowner;
- the place and date when the individual employment agreement enters into force;
- the job position of the seafarer;
- the seafarer's salary or the formula used to calculate the salary;
- the amount of paid annual leave or the formula used to determine the paid annual leave;
- the terms of the agreement and the conditions of its termination, especially when:
 - the agreement has been concluded for an indefinite period and its provisions entitle both parties to terminate the agreement, and the notice period is not shorter for the shipowner than for the seafarer; or
 - the agreement has been concluded for a definite period of a maximum of 8 months from the date of its signature;
 - the agreement has been concluded for a single voyage, indicating the port of destination and the period of time that must elapse from arrival before the seafarer can be dismissed;
- the health and social protection benefit to be provided to the seafarer by the shipowner;
- the seafarer's right to be repatriated; and
- reference to the collective labour agreement, if applicable;
- any other details that may be required by national legislation.

III. The main obligations of shipowners flying the Romanian flag

G.E.O. no. 50/2022 establishes several obligations for shipowners flying the Romanian flag, including:

- for the purpose of calculating the basic salary, normal working time at sea and in port may not exceed 8 hours/day;
- the normal working time per week remunerated by the basic salary must not exceed 40 hours per week, and what exceeds this amount is considered as additional work;
- overtime allowance cannot be less than 125% of the minimum base salary or the hourly salary;
- the termination notice for employment is at least 20 working days;
- annual paid leave is calculated based on a minimum of 2.5 calendar days per each month of employment in which the seafarer worked, and, proportionally, for months worked incompletely;
- Romanian flag-bearing vessels must meet the minimum standards for seafarers' accommodation, living and working conditions on board, protection of health and safety at work on board the vessel, bearing the costs generated by illness, accident or death occurring while the seafarers carry out their activity.