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REPORT

From: General Secretariat

To: Council

No. Cion prop.: 8241/12 MAR 38 TRANS 106 SOC 242

No. prev. doc.: 14489/12 MAR 118 TRANS 316 SOC 800 CODEC 2282

Subject: **Preparation of the Council meeting (Transport, Telecommunications and Energy) on 29 October 2012**

Proposal for a Directive of the European Parliament and of the Council concerning flag State responsibilities for the enforcement of Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC
- General approach

Introduction

1. On 23 March 2012, the Commission transmitted the above proposal to the European Parliament and to the Council.

Content of the proposal

2. The Maritime Labour Convention (MLC 2006) was adopted by the International Labour Organisation (ILO) on 23 February 2006. On 20 August 2012, 30 Member States of the ILO with a total share of at least 33 per cent of the world gross tonnage of ships had deposited their ratification instruments. Consequently, MLC 2006 will enter into force as binding international law on 20 August 2013. MLC 2006 provides comprehensive rights and protection at work for all seafarers regardless of their nationality and the flag of the ship. It aims to both achieving decent working conditions for seafarers and securing fair competition for quality shipowners. It applies to international shipping and covers essential matters such as the minimum requirements for seafarers to work on board a ship (Title 1 of MLC 2006), conditions of employment (Title 2), accommodation, recreational facilities, food and catering (Title 3), health protection, medical care, welfare and social security protection (Title 4) and compliance and enforcement (Title 5).
3. In 2008, the European social partners concluded an agreement on MLC 2006. In 2009, the Council adopted a directive implementing that agreement (2009/13/EC). However, the social partners do not have the power to include in their agreement the enforcement provisions of MLC 2006. The proposed directive aims at supplementing Directive 2009/13/EC by including the enforcement provisions of the convention. It contains provisions on monitoring of compliance, personnel in charge of compliance monitoring and handling of complaints and corrective measures.

Work within the European Parliament

4. The European Parliament has only recently started the examination of the proposal. A rapporteur was nominated in April 2012 (Ms Berès, S&D-France) by the parliamentary committee responsible, the Employment and Social Affairs Committee (EMPL). A first exchange of views in the EMPL committee took place on 9 October 2012. The Transport and Tourism Committee (TRAN) will give an opinion (rapporteur: Mr Bach, EPP-Luxembourg).
5. The vote in the EMPL committee is scheduled for January 2013, and vote in plenary could take place in February or March 2013.

Work within Council bodies

6. The examination of the proposal by the Shipping Working Party started in April 2012, under the Danish Presidency. It should be noted that the proposal was not accompanied by an impact assessment.
7. The proposal was the subject of a progress report to the TTE Council on 7 June 2012¹.
8. At its meeting on 4 October, the Shipping Working Party concluded the examination of the draft general approach.
9. On 12 October 2012, the Permanent Representatives Committee examined the draft general approach and solved most of the outstanding issues. However, some reservations remain.

¹ Doc. 9863/12.

Remaining reservations

10. Slovenia has a general reservation on the whole proposal, in particular because of the legal basis chosen. Slovenia argues that since the proposed Directive aims to implement or rather to supplement Directive 2009/13/EC (adopted on the basis of Article 139(2) of the EC Treaty, now Article 155(2) TFEU), which in turn enforces and supplements an agreement between the social partners implementing MLC 2006, it would have been more logical to amend Directive 2009/13/EC on that same legal basis, or at least to amend Directive 2009/21/EC on compliance with flag State requirements. This would notably be more in line with the principles guiding the choice of legal basis and of better regulation, simplification and transparency.

11. Malta and the United Kingdom maintain parliamentary scrutiny reservations.

12. The Commission maintains a general reservation. Its reservation pertains notably to two issues. First and foremost, the Commission reserves its position on the definition of "relevant parts of MLC 2006", due to the fact that the definition does not make reference to MLC 2006 *as implemented by* Directive 2009/13/EC. According to the Commission, the definition appearing in Article 2 of the draft general approach should make reference to Union legislation rather than to an international convention, in particular since Union social legislation in certain cases ensures a higher level of protection for seafarers. Secondly, the Commission does not agree with the text of recital 10a, which indicates that Directive 2009/21/EC applies to IMO Conventions. This seems to imply that Directive 2009/21/EC would not apply to ILO Conventions such as MLC 2006. According to the Commission, Article 8 of Directive 2009/21/EC, concerning quality management systems, is applicable to any operational flag State-related activities, whether based on conventions adopted within the framework of IMO or on other conventions. In this context, the Commission underlines that recital 4 of Directive 2009/21/EC explicitly refers to MLC 2006.

Conclusion

13. The Council is invited to examine and adopt the draft general approach on the basis of the text set out in the Annex to this report.
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Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour
Convention, 2006

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union action in the field of maritime transport aims, inter alia, at improving shipboard living and working conditions of seafarers, security and safety at sea and the prevention of pollution caused by maritime accidents.
- (2) The Union is aware of the fact that most accidents at sea are directly caused by human factors, especially fatigue.

² OJ C 299, 4.10.2012, p. 153.

- (3) One of the main objectives of the maritime safety policy of the Union is to eradicate substandard shipping.
- (4) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006 (MLC 2006), desiring to create a single, coherent and up to date instrument, embodying also the fundamental principles to be found in other international labour conventions.
- (4a) According to Article VIII of MLC 2006, the Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of 33 per cent. This condition was reached on 20 August 2012, with subsequent entry into force on 20 August 2013.
- (5) Council Decision 2007/431/EC of 7 June 2007³ has authorised the Member States to ratify MLC 2006. Member States are urged to ratify it as soon as possible.
- (6) MLC 2006 sets out minimum global standards in order to secure the right of all seafarers to decent employment conditions, regardless of their nationality and of the flag of the ships on which they serve, and to establish a level playing field.
- (6a) Different parts of MLC 2006 are introduced into separate Union instruments both as regards flag State and port State obligations. The aim of this Directive is to introduce certain compliance and enforcement provisions foreseen in Title 5 of MLC 2006 for the purpose of such parts of MLC 2006 for which the required compliance and enforcement provisions have not yet been adopted. These parts correspond to the elements as set out in the Annex to Council Directive 2009/13/EC of 16 February 2009⁴.
- (7) Directive 2009/13/EC implements the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ("the Agreement"). The provisions in Directive 2009/13/EC should not be affected by the present Directive.
- (8) [...]

³ Decision 2007/431/EC authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

⁴ OJ L 124, 20.5.2009, p. 30.

- (9) [...]
- (10) Although Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements⁵ governs flag State responsibilities by incorporating the voluntary IMO Member States audit scheme into Union law and by introducing the certification of quality of national maritime authorities, a separate directive covering the maritime labour standards would be more appropriate and would more clearly reflect the different purposes and procedures and Directive 2009/21/EC should not be affected by the present Directive.
- (10a) The provisions of Directive 2009/21/EC apply to IMO Conventions. In any case, Member States could develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of its maritime administration falling within the scope of this Directive.
- (11) Member States should ensure the effective discharge of their obligations as flag States with respect to the implementation of the relevant parts of MLC 2006 which correspond to the elements as set out in the Annex to Directive 2009/13/EC by ships flying their flag. In establishing an effective system for monitoring mechanisms, including inspections, a Member State could, where appropriate, grant authorization to public institutions or other organisations within the meaning of Regulation 5.1.2 of MLC 2006 and under the conditions set out by the latter.
- (12) [...]
- (13) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

⁵ OJ L 131, 28.5.2009, p. 132.

- (14) Since this Directive aims to ensure compliance with and enforcement of the relevant parts of MLC 2006 it should enter into force on the same date as MLC 2006,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules to ensure that Member States effectively discharge their obligations as flag States with respect to the implementation of the relevant parts of MLC 2006. This Directive shall be without prejudice to Directives 2009/13/EC and 2009/21/EC.

Article 2

Definitions

For the purposes of this Directive, the following definition shall apply, in addition to the relevant definitions set out in the Annex to Directive 2009/13/EC:

"relevant parts of MLC 2006" means the parts of MLC 2006 which correspond to provisions in the Annex to Directive 2009/13/EC.

b) [...]

Article 3
Monitoring of compliance

Member States shall ensure that appropriate monitoring mechanisms, including inspections, are established to ensure that the conditions of seafarers on ships flying their flag meet, and continue to meet, the requirements of the relevant parts of MLC 2006.

With respect to ships of less than 200 gross tonnage not engaged in international voyages, Member States may, in consultation with the ship-owners' and seafarers' organisations concerned, decide to adapt, as set out in Article II paragraph 6 of MLC 2006, the monitoring mechanisms, including inspections, to take account of the specific conditions relating to such ships.

Article 4
Personnel in charge of compliance monitoring

Member States shall ensure that personnel in charge of verifying the proper implementation of the relevant parts of MLC 2006 have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out that verification and ensure compliance with the relevant parts of MLC 2006.

Article 5
Handling of complaints and corrective measures

1. If a Member State receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of the relevant parts of MLC 2006 or that there are serious deficiencies in its implementing measures, that Member State shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

2. Personnel in charge of dealing with complaints shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

Article 5a
Reports

The Commission shall, in the context of its reports to be established in accordance with Article 9 of Directive 2009/21/EC, include matters falling within the scope of this Directive.

Article 6
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. They shall forthwith communicate to the Commission the text of those provisions.

^{*} OJ: Please insert date: 18 months after the date of entry into force of this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 7
Entry into force

This Directive shall enter into force on the date of entry into force of MLC 2006.

Article 8
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
