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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 July 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a COUNCIL DIRECTIVE implementing the Agreement
concluded by the European Community Shipowners' Associations (ECSA)
and the European Transport Workers' Federation (ETF) to amend Council
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

Delegations will find attached document COM(2017) 406 final.

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Brussels, 27.7.2017
COM(2017) 406 final

2017/0181 (NLE)

Proposal for a

COUNCIL DIRECTIVE

implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Council 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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The International Labour Organisation (ILO) adopted the Maritime Labour Convention (MLC) in 2006 to create a single, coherent instrument bringing together all up-to-date standards for international maritime labour. The MLC provides comprehensive rights and protection at work for all seafarers, regardless of their nationality and the ship's flag. So far it has been ratified by 81 countries, including all EU Member States except Austria, Slovakia and the Czech Republic.¹

The provisions of the MLC were incorporated into EU law by Council Directive 2009/13/EC² implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006. The Directive updated EU law with MLC standards that were more favourable for seafarers than those in place (employment agreements, working hours, repatriation, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures, etc.). The Directive promoted ratification of the MLC across the EU and helped to speed up its entry into force. It also helped to bring about the uniform transposition of MLC standards in all Member States and invested the agreement with specific enforcement measures under EU law.

The 2006 MLC only partially addressed the problems relating to liability and compensation in connection with crew claims for death, personal injury and abandonment in foreign ports when shipowners no longer fulfil their responsibilities. The shipping industry is global in nature, with different national laws applying, depending on the State of the shipowner, the flag State of the vessel or the nationality of the crew. This makes it difficult for seafarers to get speedy and satisfactory redress in the event of abandonment, injury or death.

These problems have long been recognised both by the ILO and the IMO (International Maritime Organisation). In 1998 they established the joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers. This group recommended a two-step approach: the first step would be the adoption of non-binding guidelines,³ and the second step the adoption of mandatory

¹ Austria was not obliged to transpose Council Directive 2009/13/EC for geographical reasons (see Commission decision of 29 September 2016 to close non-communication infringement case 2014/0489 against Austria) given that it is a landlocked Member State that no longer has a register for sea ships and does not intend to introduce such a register in the near future. The Czech Republic and Slovakia are also landlocked countries with no merchant fleet flying their flag, according to UNCTAD statistics on merchant fleet by flag of registration and by type of ship.
See <http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93>.

² OJ L 124, 20.5.2009, p. 30. The Directive entered into force on 20 August 2013, the day of entry into force of the MLC. Member States were to transpose it into their national legislation by 20 August 2014.

³ Two guidelines relating to financial security to cover claims from seafarers in cases of abandonment, personal injury and death were adopted by the IMO Assembly in November 2001: <http://www.imo.org/en/OurWork/Legal/JointIMOILOWorkingGroupsOnSeafarerIssues/Pages/IMOILOWGLiabilityCompensationForDeathAbandonment.aspx>.

instruments. It also recommended the establishment of a database on incidents of abandonment of seafarers, which was established in 2005.⁴

In 2010 and 2011, following the recommendations of the joint working group, the ILO identified two priority concerns: the abandonment of seafarers and financial security; and claims related to death or long-term disability of seafarers. In 2004, the Special Tripartite Committee established under the MLC adopted two amendments on these issues. As of March 2016, the ILO abandonment of seafarers database listed 192 abandoned merchant ships, some dating back to 2006, with abandonment cases still unresolved. Many abandoned seafarers are aboard ships without pay, often for several months, and lack regular food supplies, medical care, or the means to return home.

Some of the rules introduced by the amendments fell within the European Union's competence and concerned matters on which it had adopted rules, in particular in social policy and transport. Therefore, the Council adopted a Decision (2014/346/EU)⁵ on the position to be adopted on behalf of the Union at the 103rd session of the International Labour Conference on the 2014 amendments to the MLC, ensuring Union support for their approval.

The amendments were approved by the International Labour Conference at its 103rd session in Geneva on 11 June 2014. All EU Member States voted to approve them. The two sets of amendments concern both the mandatory provisions (part A regulations and standards) and the non-mandatory provisions (part B guidelines)⁶ in the MLC Code. They cover Regulation 2.5 (repatriation) in Title 2 on conditions of employment, and Regulation 4.2 (shipowners' liability) in Title 4 on health protection, medical care, welfare and social security protection.

The amended mandatory provisions seek to deliver an effective financial security system that:

- (1) protects seafarers' rights in the event of abandonment (amendment to Regulation 2.5). This amendment improves the financial security system applying when the shipowner fails to cover the cost of their repatriation, as already recognised by Regulation 2.5(2). It also recognises two new situations: when the shipowner has left the seafarer without the necessary maintenance and support; or when the shipowner has otherwise unilaterally severed his ties with the seafarer, including failing to pay contractual wages for at least two months. It also includes requirements to establish a rapid and effective financial security system to assist seafarers on a ship flying the flag of a Member State in the event of abandonment;
- (2) establishes minimum requirements for the financial security system to provide compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard (amendment to Regulation 4.2).

⁴ Database on reported incidents of abandonment of seafarers.

See <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>. The content of the database is limited to vessels reported as abandoned after 1 January 2004.

⁵ Council Decision 2014/346/EU of 26 May 2014 (OJ L 172, 12.6.2014, p. 28).

⁶ Countries that ratify the MLC must adopt national laws or take other measures to ensure that the principles and rights set out in the regulations are implemented in the manner set out by the standards in part A of the Code (or in a substantially equivalent manner). The guidelines are not mandatory and are not subject to port State inspections, however, governments are required to give due consideration to their content when implementing their responsibilities, and this is reviewed by the ILO's supervisory system.

Therefore, these amendments improve and expand the existing system of protection for seafarers; they make compensation procedures easier and more effective; and they are supported by the obligation to carry documentary evidence of the financial security system on board ships.

These amendments to the MLC entered into force on 18 January 2017 for 18 Member States.⁷ In the Netherlands, the amendments are expected to enter into force as from 1 January 2018.⁸ Italy and Lithuania deferred the entry into force of the amendments until 18 January 2018.⁹ As regards the four Member States that ratified the MLC after the amendments had been approved, Slovenia has already accepted the amendments, which will enter into force on 3 August 2017. However, Romania, Estonia and Portugal have yet to submit a formal declaration of acceptance. This is expected in the coming months.¹⁰

On 5 December 2016 the social partners in the maritime transport sector, the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF), concluded an agreement to amend their agreement implementing the MLC, 2006, as annexed to Directive 2009/13/EC, to bring it in line with the 2014 amendments to the MLC. This agreement reproduces the content of all mandatory provisions of the 2014 amendments to the MLC.

On 12 December 2016 ECSA and the ETF requested that the Commission implement their agreement through a proposal for a Council decision in accordance with Article 155(2) of the TFEU. This proposal responds to their request.

The Commission submits this proposal in order to align Directive 2009/13/EC, and the agreement annexed to it, with the ILO 2014 mandatory amendments to the MLC. This will improve the working conditions, health and safety and social protection for seafarers on board ships flying the flag of an EU Member State.

The proposal also aims to ensure the effective enforcement of the ILO 2014 mandatory amendments to the MLC across the EU through the application of the enforcement Directive

⁷ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11301:0::NO::P11301_INSTRUMENT_AMENDMENT_ID:3256971

⁸ The Netherlands has stated that it will be bound by the amendments only after a subsequent express notification of its acceptance under Article XV, paragraph 8(a) of the Convention. It has done this to defer acceptance of the amendments and implement them through Dutch legislation, as the Netherlands has announced that it expects the amendments to enter into force on 1 January 2018. See https://www.ilent.nl/english/merchant_shipping/crew/legislation/amendments_mlc_2014/.

⁹ They have made use of the option under Article XV, paragraph 8(b) of the Convention.

¹⁰ General Observation, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, p.577: 'in a number of cases, questions have arisen as to the manner in which Members whose ratification was registered between the approval and the entry into force of the amendments may accept the amendments to the Code adopted pursuant to Article XV of the MLC, 2006. (...) The Committee notes that, in the meantime, the Office has informed all the Members concerned that they may accept the amendments by addressing a formal declaration to that effect to the Director-General'. See [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2017-106-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2017-106-1A).pdf). For Romania, Estonia and Portugal the MLC entered into force on 24 November 2016, 5 May 2017, and 12 May 2017 respectively, but the amendments will enter into force when they declare acceptance. Nevertheless, given that they voted in favour of the amendments, it is expected that they will declare acceptance in the coming months.

on flag State responsibilities (Directive 2013/54/EU).¹¹ This Directive lays down rules to ensure that Member States:

- effectively comply with their obligations as flag States in implementing the relevant parts of MLC 2006 (meaning those parts with content considered as corresponding to the provisions in the Annex to Directive 2009/13/EC); and
- establish specific regimes for monitoring compliance and handling of on-board and onshore complaint procedures.

Once the Annex to Directive 2009/13/EC has been amended by this proposal, the monitoring measures of Directive 2013/54/EU will also apply to the 2014 amendments to the MLC, without the need to amend the latter specifically.

- **Consistency with existing policy provisions in the policy area**

This proposal fits within the Commission's work to establish a fair and truly pan-European labour market that provides workers with decent protection and sustainable jobs¹². This includes occupational safety and health protection, working time, social protection and rights connected to the employment contract. In pursuing an integrated maritime policy for the EU the Commission also supports fully 'the social dialogue on the integration of the ILO Convention on maritime labour standards into Community law'.¹³

This proposal supports maritime safety in another way. Protecting abandoned seafarers by offering them repatriation, support and maintenance and paying their outstanding wages can help prevent accidents for the vessel and the crew, because it means that seafarers do not have to stay on board abandoned ships stranded in ports until they are repatriated or paid their outstanding wages. Nor are they left in drifting vessels without fuel or basic food and water supplies.

A more robust financial security system for cases of abandonment, death and long-term disability of seafarers will lift the burden on the European ports and coastal communities currently providing assistance to affected seafarers and their families.

This proposal complements the efforts to implement the MLC more effectively by drawing on the specific regimes for monitoring and handling on-board and onshore complaint procedures in enforcement Directive 2013/38/EU¹⁴ on port State control. This Directive included the MLC 2006 among the Conventions whose implementation is verified by Member State authorities in their ports. This ensures that the treatment of ships, and their crew, flying the flag of a non-ratifying State is not more favourable than that of a ship, and its crew, flying the flag of a ratifying State. The 2014 amendments to the MLC are already subject to this Directive, as it applies to the MLC, including all its amendments.

¹¹ Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006. (OJ L 329, 10.12.2013, p. 1–4)

¹² President Juncker's State of the Union address in the European Parliament on 9 September 2015.

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An Integrated Maritime Policy for the European Union (COM/2007/0575 final, p. 9)

¹⁴ Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control (OJ L 218, 14.8.2013, p. 1).

The proposal complements Directive 2015/1794/EU,¹⁵ which includes seafarers in the scope of five labour law Directives (on the protection of employees in the event of the insolvency of their employer, information and consultation of employees, on the establishment of a European Works Council, collective redundancies and transfers of undertakings), thus improving their labour rights and giving them the same rights as onshore employees.

- **Consistency with other Union policies**

For Europe, maritime transport has been a catalyst for economic development and prosperity throughout its history. The maritime transport of goods and passengers furthers both intra-EU and international trade and promotes contacts between all European nations, citizens and tourists. The growing shortage of maritime professionals, officers and ratings carries with it the risk of losing the critical mass of human resources that sustains the competitiveness of the European maritime industries in general. This proposal responds to the aim of supporting, under the Maritime Transport Strategy until 2018,¹⁶ *‘the work of the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) on the fair treatment of seafarers, to ensure, inter alia, that the guidelines on the treatment of seafarers in the event of a maritime accident, abandonment, personal injury or death of seafarers, and shore leave conditions are adequately implemented in the EU and worldwide’*. This should make the maritime professions more attractive to Europeans.

The proposal will contribute to fairer competition conditions for those shipowners in the EU maritime transport sector that respect seafarers’ rights and are often disadvantaged by substandard shipping.

The implementation of the social partners’ agreement through EU law is also in line with the Commission’s commitment to promote cross-industry and sectoral social dialogue at EU level, as expressed in the joint statement, *A New Start for Social Dialogue*,¹⁷ that the EU social partners, the Presidency of the Council and the Commission signed on 27 June 2016.

This agreement is a positive example of social partners supporting the Commission’s better regulation agenda in keeping EU law up to date and fit for purpose.¹⁸

It also reflects the principle of the European Pillar of Social Rights¹⁹ on social dialogue and involvement of workers, which states that *‘The social partners (...) shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States’*. It also fits within other specific principles and rights recognised by the European

¹⁵ Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (OJ L 263, 8.10.2015, p. 1).

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Strategic goals and recommendations for the EU’s maritime transport policy until 2018*, COM(2009) 8 final, section 3.

¹⁷ *A New Start for Social Dialogue* - Statement of the Presidency of the Council of the European Union, the European Commission and the European Social Partners, 27 June 2016.

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Better regulation for better results - An EU agenda*, COM(2015) 215 final.

¹⁹ SWD(2017) 201 final.

Pillar of Social Rights, such as *wages, a healthy, safe and well-adapted work environment and data protection and social protection*.

Overall, this proposal helps bring the Sustainable Development Goals fully into the European policy framework, in accordance with the commitment made in the Commission Communication *Next steps for a sustainable European future: European action for sustainability*.²⁰

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 155(2) constitutes the legal basis for this proposal.

Article 155(2) of the TFEU provides that *'Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed. The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2)'*.

The first amendment in the social partners' agreement on the financial security system in the event of abandonment of the seafarer, relates both to health and safety and working conditions and thus is covered by Article 153(1)(a) on improvement in particular of the working environment to protect workers' health and safety and (b) on working conditions.

The second amendment, on the requirements to the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, is covered by Article 153(1)(c) on social security and social protection of workers.

Given that this is an area for which unanimity is required pursuant to Article 153(2), second subparagraph, the Council will have to decide by unanimity.

- **Subsidiarity**

This proposal ensures that EU law and the MLC are consistent and that the 2014 amendments to the MLC are properly enforced across the EU through the application of the Directive 2013/54/EU on flag State responsibilities. This objective cannot be achieved by means of national legislation, as changes to existing EU legislation can be made only at EU level.

Moreover, there must be equal treatment across the EU fleet and EU ports, and with non-EU fleets. In addition, the Council has formally spelled out in Council Decision 2014/346/EU that *'Parts of the rules under the Convention and the amendments are falling within the Union's competence and concern matters in respect of which the Union has adopted rules'*.

The proposal will help apply the mandatory amendments to the MLC at the same time and in the same way in all Member States. This is necessary to ensure the aforementioned level

²⁰ COM(2016) 739 final.

playing field across EU fleet and EU ports. The proposal may reduce the negative impacts on EU port States, as fewer cases should fall under paragraph 5(a) of Standard A.2.5 of the Annex to Directive 2009/13/EC. Under this paragraph, if a shipowner fails to arrange for the repatriation of the seafarer, the EU flag State must do so. If it also fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the EU flag State.

For Member States which are not or not yet bound by the amendments (Member States that either have not ratified the MLC²¹ or have yet to submit a formal declaration of acceptance²²), EU action would have the added value of applying the agreement to shipowners flying their flags and thus improving working conditions for seafarers and social protection for seafarers on board those vessels and their families.

The proposal has added value also for Member States that have ratified the MLC, in which the amendments have already entered into force and which are thus bound by them. It will align the scope of the 2014 amendments with the scope of Directive 2009/13/EC, bring them within the scope of enforcement Directive 2013/54/EU on flag State responsibilities and within the EU law supervisory and monitoring system, including the jurisdiction of the Court of Justice of the European Union, on top of the MLC supervisory system. This will give seafarers greater protection and should increase compliance by Member States and shipowners with the new requirements.

- **Proportionality**

The proportionality principle is met because the scope of the proposal is strictly limited to transposing into EU law the updated mandatory minimum standards contained in the 2014 amendments to the MLC, 2006.

The proposal leaves EU Member States the options of keeping or setting more favourable standards for workers and taking into account features specific to their national situation. As a consequence, it leaves room for flexibility as regards the choice of actual implementing measures.

- **Choice of the instrument**

The instrument chosen is a directive. The term ‘decision’ in Article 155(2) of the TFEU is used in its general meaning, so that the legislative instrument can be selected in accordance with Article 288 of the TFEU. It is up to the Commission to propose the most appropriate of the three binding instruments referred to in that Article (a regulation, directive or decision).

Article 296 of the TFEU states that *‘where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality’*.

In this instance, the Commission considers that a directive is the most suitable instrument, since it will amend another directive (Directive 2009/13/EC) and since the social partners’ agreement includes obligations and rights that will have to be transposed by Member States into their national law.

²¹ Austria, the Czech Republic and Slovakia.

²² Romania, Portugal and Estonia.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

No evaluation of the existing Directive 2009/13/EC has been undertaken, since the transposition deadline was 20 August 2014 and the transposition compliance assessment has not been concluded.²³

- **Stakeholder consultations**

Where social partners request that the Commission present a proposal for a Council decision implementing their agreement in accordance with Article 155 of the TFEU, better regulation principles must be applied without prejudice to the role and autonomy the TFEU entrusts to them, the Commission's task to facilitate their dialogue, or the need for overall transparency.

Given the transparency of the process, the fact that the social partners party to this agreement are representative of employers and workers in the sector, and the role entrusted to the social partners by Article 155 of the TFEU, no additional public consultation has been carried out.²⁴

- **Impact assessment**

The proposal will align the scope of the ILO 2014 mandatory amendments with that of Directive 2009/13/EC which precludes the possibility under Article II(6) of the MLC not to apply certain details of the Code, which the competent authority determines not to be reasonable or practicable, to ships of less than 200 gross tonnage that are not engaged in international voyages, to the extent that the subject matter is dealt with differently by national measures.²⁵

Nevertheless, these impacts are considered to be limited given that:

- According to the MLC database,²⁶ to date none of the ratifying Member States for which the ILO 2014 amendments have already entered into force has communicated to the ILO any national determinations on the ILO 2014 amendments.
- The subjective scope of the derogation is very limited as it applies only to ships of less than 200 gross tonnage engaged in domestic voyages.

²³ Currently there are still eight open infringement procedures for non-communication of the transposition measures (Greece, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia and Slovenia) which are under examination.

²⁴ http://ec.europa.eu/smart-regulation/guidelines/tool_7_en.htm.

²⁵ Article II(6) Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages

²⁶ <http://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm>

- To date some ratifying States have made use of this derogation, principally for certain details of Title III of the MLC on accommodation. Since the ILO 2014 amendments refer to the protection of basic minimum rights (repatriation, essential needs of the seafarer including food and accommodation and payment of outstanding wages up to 4 months) and compensation in case of the worst incidents that can occur to a seafarer for occupational reasons (death or long-term disability), it will be difficult to justify the use of the derogation in such cases.
- The potential national derogations cannot apply to the obligation to have documentary evidence of financial security in case of abandonment since this obligation only applies to ships required to carry a maritime labour certificate²⁷. It must also be recalled that the ILO 2014 amendments improve and expand an existing protection system under which Member States are already obliged to require all ships that fly its flag to provide the financial security to cover repatriation and to assure compensation in case of death or long-term disability for occupational reasons.
- The conditions to make use of the derogation (including the requirement to consult the social partners) are relatively strict.
- Member States have flexibility in monitoring the application of the new requirements to ships of less than 200 gross tonnage not engaged in international voyages under Article 3(2) of Directive 2013/54/EU, which allows Member States to adapt, pursuant to Article II(6) of MLC, monitoring mechanisms, including inspections, to take account of the specific conditions of those ships.

The proposal will also bring the ILO 2014 amendments within the scope of the enforcement Directive 2013/54/EU on flag State responsibilities and the EU law supervisory and monitoring system, including the jurisdiction of the Court of Justice of the European Union, on top of the MLC supervisory system. This should make for greater compliance by Member States and shipowners.

Since the proposal is otherwise not likely to have significant economic, environmental or social impacts against the baseline scenario, no impact assessment has been conducted for this proposal.²⁸

The baseline scenario assumes that EU Member States that have ratified the MLC will implement the 2014 amendments, as these either entered into force in those Member States on 18 January 2017 or will do so soon. Therefore, in the absence of the adoption of the social partners' agreement, it is likely that all ratifying Member States would in any case apply the 2014 amendments and therefore implement the protection systems in case of abandonment and compensation for death or personal injury of seafarers and that this implementation will

²⁷ According to Regulation 5.1.3 of the MLC, ships required to carry a maritime labour certificate are ships of (a) 500 gross tonnage or over, engaged in international voyages; and (b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.

²⁸ According to the Better Regulation Guidelines (SWD(2015) 111 final), an impact assessment is required for initiatives that are likely to have significant economic, environmental or social impacts. See http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf.

be monitored by the ILO supervisory system. This system is based on the examination of national reports and on observations of the social partners by two ILO bodies (the Committee of Experts on the Application of Conventions and Recommendations and the International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations). However, in case of failure to implement the amendments, this system does not provide for a judicial mechanism like the one of the Court of Justice of the European Union.

The new requirements will prevent the unfortunate situation of seafarers being stranded on anchorage or in port for long periods when shipowners abandon their crews without paying their wages or without repatriating them to their home countries. The estimated number of active seafarers in maritime EU Member States in 2010, plus Norway, is 254 119.²⁹ According to the ILO's abandonment of seafarers database, 192 merchant ships have been abandoned from 2004 of which 21 were EU-flagged vessels. In 2016, 20 merchant ships were abandoned, of which only eight cases had been resolved by 30 May 2017. Of these 20 vessels abandoned in 2016, four were EU-flagged vessels with 45 abandoned seafarers in total. Some unresolved cases of abandonment date back to 2006. In the past, abandoned seafarers would often be reluctant to leave their ship until it was sold in a judicial sale to pay outstanding claims, including claims for unpaid wages. Now, the payment of such claims will be expedited by the financial security system. Furthermore, payment of outstanding claims to seafarers or their families in cases of death or long-term disability resulting from their employment will also be expedited. This will help avoid the long delays in payment and red tape in proceedings that seafarers or their families frequently encounter.

Better protection for abandoned seafarers will also benefit all EU port authorities, because it will result in fewer problematic cases of abandonment. According to the ILO's abandonment of seafarers database, in 2016 five merchant vessels were abandoned in EU ports with 58 seafarers.

Nevertheless, according to the MLC (paragraph 13(a) of Article XV), port State control of ratifying countries that have accepted the amendments also applies to non-ratifying countries and ratifying countries that are not bound by the amendments. This implies that ships flying the flag of ratifying EU Member States not yet bound to the 2014 amendments as well as of non-ratifying EU Member States will be subject to inspection of port authorities of the ratifying countries if they do not meet the requirements of the amendments.

Given these expected developments under the baseline scenario, the Council directive would therefore have no significant impact for any of the twenty-two ratifying Member States in which amendments already entered into force on 18 January 2017 or will enter into force soon as well as for the three landlocked Member States that have not ratified the MLC (Austria, the Czech Republic and Slovakia).

The application of the provisions of this proposal will not increase the monitoring costs for the ratifying Member States since they have to incur those costs by virtue of their ratification of the MLC and its amendments. And given that the non-ratifying Member States are landlocked countries without any fleet at present it is expected that they will not incur monitoring costs as a result of this proposal.

²⁹ Study on EU seafarers' employment. Final Report. DG MOVE, 2011.
<https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2011-05-20-seafarers-employment.pdf>

As to the potential monitoring costs in case of ships less than 200 gross tonnage not engaged in international voyages, Article 3(2) of Directive 2013/54/EU allows Member States to adapt their monitoring mechanisms, including inspections, to take account of those specific conditions.

- *Representativeness of the EU social partners in the maritime transport sector*

When assessing a request from EU social partners to implement their agreement in EU law according to Article 155 of the TFEU, the Commission examines their representativeness and mandate in the area in question. This ensures that the request is in line with the provisions of the TFEU and that the agreement can count on broad support among those actually concerned.

In accordance with Article 1 of Commission Decision 98/500/EC,³⁰ social partners at European level must:

- (a) relate to specific sectors or categories and be organised at European level;
- (b) consist of organisations which are themselves an integral and recognised part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States; and
- (c) have adequate structures to ensure their effective participation in the work of the (Sectoral) Dialogue Committees.

These conditions should be fulfilled at the time when the agreement was signed.

This agreement concerns working conditions in maritime transport, which matches the remit of the sectoral social dialogue committee for maritime transport. The social partners on the committee are the European Community Shipowners' Associations (ECSA) representing employers and the European Transport Workers' Federation (ETF) representing workers.

On 30 June 2016 the European Foundation for the Improvement of Living and Working Conditions (Eurofound) published a study analysing the representativeness of the ETF and ECSA as social partner organisations in maritime transport at EU level.³¹

With the exception of the landlocked countries (Austria, the Czech Republic, Hungary and Slovakia) and Bulgaria, Latvia, Romania and Poland, ECSA³² has members in all EU Member States (and in Norway).^{33,34} While a considerable number of seafarers come from Poland, there are only very few shipowners' companies in Poland, and there are no sector-

³⁰ Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level. (OJ L 225, 12.8.1998, p. 27–28)

³¹ <https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/representativeness-of-the-european-social-partner-organisations-maritime-transport>.

³² ECSA is the trade association representing the national shipowners' associations of the EU and Norway. According to its website, ECSA represents almost 99 % of the European Economic Area fleet and about 20 % of the world fleet.

³³ In Bulgaria, the sector-related employers' organisation, the BSA, was affiliated to ECSA from 2007 to 2012 and then cancelled its affiliation.

³⁴ Austria, Hungary and Slovakia were excluded from the study because of the absence of sector-related activities. In spite of (limited) sector-related activities in the Czech Republic, no sector-related employers' organisation was found there.

related employers' organisations in Latvia. That means the only Member States to which ECSA could realistically extend its membership are Bulgaria and Romania.

On the workers' side, the ETF has 56 affiliates from 25 Member States, accounting for 64 % of all trade unions with sector-related activities. Fifty-two of these affiliates are themselves involved in sector-related collective bargaining. The ETF has sector-related affiliates in all Member States with sector-related activities, according to the Eurofound study.

This leads to the conclusion that – based on their membership – the social partners which signed the agreement are the leading European-level social partner organisations in the sector, that they are representative of the sector, and that they are therefore entitled to request that the Commission implement the agreement in accordance with Article 155 of the TFEU.

- *Legality of the clauses*

The Commission has examined the legality of the agreement. It has scrutinised each clause and has not found any to be contrary to EU law. The obligations which would be imposed on the Member States do not arise directly from the agreement between the social partners. Rather they would arise from its implementation by means of a Council decision, i.e. a directive. The scope and content of the agreement remains within the fields listed in Article 153(1) of the TFEU as stated in section 2.

The agreement contains two sets of amendments to the Annex to Directive 2009/13/EC that will not affect the current non-regression clauses contained in Article 3 of the Directive.

- **Regulatory fitness and simplification**

The proposal implements a social partners' agreement. In such cases, the Commission cannot amend the text of the agreement but can only accept or reject it.³⁵

The majority of the provisions of the social partners' agreement and the 2014 amendments to the MLC do not draw any distinction between workers in SMEs and others. They apply to all ships ordinarily engaged in commercial activities other than ships engaged in fishing or in similar pursuits and ships of traditional build, such as dhows and junks. Directive 2013/54/EU allows Member States to adapt their monitoring mechanisms to the specific conditions of ships of less than 200 gross tonnage not engaged in international voyages.

The agreement and the 2014 amendments to the MLC are less demanding for SMEs as regards the obligation to carry on board documentary evidence of financial security to assist seafarers in the event of abandonment. This obligation only applies to ships that are required to carry a maritime labour certificate under national law or are requested to do so. According to Regulation 5.1.3 of the Code to the MLC, ships of 500 gross tonnage or above that are engaged in international voyages or voyages between foreign ports, along with smaller ships where the shipowner so requests, are required to carry a maritime labour certificate.

- **Fundamental rights**

The objectives of this proposal are in line with the Charter of Fundamental Rights of the European Union, in particular the right protected under Article 31 on fair and just working

³⁵ http://ec.europa.eu/smart-regulation/guidelines/tool_7_en.htm.

conditions, which provides that ‘*Every worker has the right to working conditions which respect his or her health, safety and dignity*’.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the Directive implementing the agreement.

Directive 2009/13/EC does not contain any evaluation or reporting requirements. No such requirements are planned for this Directive amending Directive 2009/13/EC.

- **Explanatory documents (for directives)**

Explanatory documents are not necessary in this case.

- **European Economic Area**

The proposal concerns a matter relevant to the European Economic Area and should therefore be applicable to it.

- **Detailed explanation of the specific provisions of the proposal**

Article 1

This Article makes the agreement between the social partners binding.

Article 2

This Article includes the amendments to Directive 2009/13/EC.

(1) Subparagraph 1 introduces a consequential amendment to the numbering.

(2) Subparagraph 2 inserts a new Standard A2.5.2 on ‘Financial security’ with 14 paragraphs.

– *Paragraph 1* states the purpose of the proposed standard.

– *Paragraph 2* defines the concept of abandonment for which support from a financial security system would be provided:

(a) failure to cover the cost of the seafarer’s repatriation (already recognised by Regulation 2.5(2) of the Annex to Directive 2009/13/EC);

(b) lack of maintenance and support (clarified in paragraph 5);

(c) any other situation involving a unilateral severance by the shipowner of ties with a seafarer, including the failure to pay contractual wages for at least two months.

Subparagraphs (b) and (c) extend the obligation to provide a financial security system to cover two new situations of abandonment.

- *Paragraph 3* sets out the obligation on a Member State, as a flag State, to ensure that a financial security system is in place for ships flying its flag. This system may take various forms, to be determined by the Member State after consultation with the shipowners' and seafarers' organisations concerned.
- *Paragraph 4* sets out criteria for the financial security system adopted by the flag State, including the need to provide abandoned seafarers with direct access, sufficient coverage and expedited financial assistance.
- *Paragraph 5* gives substantive details of the concept of 'necessary maintenance and support' referred to in subparagraph 2(b).
- *Paragraph 6* sets out the requirement related to carry on board documentary evidence of financial security for ships that are required to carry a maritime labour certificate under national law or are requested to do so.
- *Paragraph 7* lists the information to be included in the documentary evidence, which must be in English or be accompanied by an English translation.
- *Paragraph 8* sets out the requirement related to expedited financial assistance (see paragraph 4).
- *Paragraphs 9 and 10*, on the 'sufficient coverage' criteria proposed in paragraph 4, set out the details and scope of the assistance to be provided under the financial security system. Paragraph 9 refers to Regulation 2.5 of the Annex to Directive 2009/13/EC with respect to repatriation. It limits the coverage of outstanding wages and other entitlements to four months. Paragraph 10 provides details of repatriation coverage in cases of abandonment.
- *Paragraph 11* sets out the obligation for the financial security provider to give the flag State at least 30 days' prior notification of cancellation of the financial security.
- *Paragraph 12* provides for subrogation of rights for a provider of insurance or other financial security.
- *Paragraph 13* indicates that this standard is without prejudice to any right of recourse of the insurer or provider of financial security against third parties.
- *Paragraph 14* indicates that the rights under the proposed standard are without prejudice to any other rights, claims or remedies of the seafarer. Moreover, it allows for the adoption of provisions for offsetting amounts received under this standard from other sources such as compensation with respect to rights, claims or remedies under the standard.

(3) Subparagraph 3 proposes a consequential amendment to the current numbering of Standard A4.2, which becomes Standard A4.2.1. It adds seven new paragraphs (8 to 14) to renumbered Standard A4.2.1. It builds on the existing requirement in Standard A4.2, paragraph 1(b). Under that requirement, shipowners must provide financial security to assure

compensation in the event of death or long-term disability of a seafarer due to occupational injury, illness or hazard.

- *Paragraph 8* sets out in subparagraphs (a) to (e) minimum requirements to be contained in national laws and regulations for the financial security system to assure compensation under paragraph 1(b) of existing Standard A4.2 for contractual claims (as defined in paragraph 1 of proposed new Standard A4.2.2). They include the requirement of payment in full without delay, with interim payments where full compensation is difficult to assess.
- *Paragraphs 9 and 10* address the requirements for notification to seafarers and to flag States in the event that a shipowner's financial security is cancelled or terminated.
- *Paragraph 11* requires ships to carry on board documentary evidence of financial security issued by the financial security provider.
- *Paragraph 12* sets out the obligation for the financial security provider to give the flag State at least 30 days' prior notification of cancellation of the financial security.
- *Paragraph 13* sets out the requirement that the security must provide for the payment of all contractual claims that it covers and that arise during the period for which the document is valid.
- *Paragraph 14* lists the information required in the documentary evidence of financial security. It also sets out English-language requirements for the document.

(4) Subparagraph 4 inserts a new Standard A4.2.2 on 'Treatment of contractual claims' with three paragraphs.

- *Paragraph 1* clarifies the meaning of the term 'contractual claims' as referred to in proposed paragraph 8 in Standard A4.2 (renumbered as A4.2.1).
- *Paragraph 2* sets out how the financial security system to assure compensation in the event of death or long-term disability for occupational reasons may take various forms, to be determined by the Member after consultation with the shipowners' and seafarers' organisations concerned.
- *Paragraph 3* requires arrangements to be in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2 (renumbered as A4.2.1) through expeditious and fair procedures.

Proposal for a

COUNCIL DIRECTIVE

implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Council 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

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Management and labour ('the social partners') may, in accordance with Article 155(2) of the TFEU, request jointly that agreements they conclude at Union level be implemented by a Council decision, on a proposal from the Commission.
- (2) Council Directive 2009/13/EC³⁶ implemented the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to incorporate the provisions of the Maritime Labour Convention, 2006, (MLC) of the International Labour Organisation (ILO) into EU law, in order to update the European legislation in force with those standards of the Convention which were more favourable for seafarers. It aimed at improving working conditions for seafarers, particularly as regards employment agreements, working hours, repatriation, careers and skill development, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures.
- (3) Following international expert meetings, the ILO launched a process to amend the Convention to address concerns relating to the abandonment of seafarers and financial security on the one hand, and to claims related to death or long-term disability of seafarers on the other. The Special Tripartite Committee established under the MLC adopted two amendments on these issues at its meeting from 7 to 11 April 2014. Parts of the rules under the amendments fell within the Union's competence and concerned

³⁶ Council Directive 2009/13/EC of 16 February 2009 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 (OJ L 124, 20.5.2009, p. 30).

matters on which the Union had adopted rules, in particular in social policy and transport. Therefore, on 26 May 2014 the Council adopted a Decision (2014/346/EU)³⁷ on the position to be adopted on behalf of the Union at the 103rd session of the International Labour Conference. This position was to support the approval of the amendments to the MLC Code.

- (4) The amendments were approved by the Conference at its 103rd session in Geneva on 11 June 2014 and entered into force on 18 January 2017. These relate to providing an effective financial security system to (i) protect seafarers' rights in the event of abandonment, and (ii) assure compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. They improve and optimise the existing system for protecting seafarers, including the obligation to carry on board ships documentary evidence of the financial security system and to extend the system to cover two new situations of abandonment. (These situations relate to when seafarers have been left without the necessary maintenance and support, or when the shipowner has unilaterally severed its ties with the seafarer, including failure to pay contractual wages for a period of at least two months.)
- (5) On 5 December 2016 the social partners in the maritime transport sector – the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) – concluded an agreement to amend Directive 2009/13/EC in line with the amendments of 2014 to the MLC, 2006. On 12 December 2016 they requested the Commission to present a proposal for a Council Directive under Article 155(2) of the TFEU implementing their agreement.
- (6) The social partners' agreement reproduces the content of all mandatory provisions of the 2014 amendments to the MLC. The first amendment, on the financial security system in the event of abandonment of the seafarer, relates both to health and safety and working conditions and thus it is covered by Article 153(1)(a) and (b) of the TFEU. The second amendment, on the requirements of the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, is covered by Article 153(1)(c), on social security and social protection of workers. Therefore, the agreement relates to matters covered by Article 153 of the TFEU and can be implemented by a Council decision on a proposal from the Commission, according to Article 155(2). For the purposes of Article 288 of the Treaty, the appropriate instrument to implement the agreement is a directive.
- (7) In accordance with Commission Communication of 20 May 1998³⁸ on adapting and promoting the social dialogue at Community level, the Commission has assessed the representative status of the signatory parties and the legality of each clause of the agreement.
- (8) The social partners' agreement of 5 December 2016 amends the agreement of 19 May 2008 between ECSA and the ETF on the MLC, annexed to Directive 2009/13/EC, and incorporates into the Directive the 2014 ILO amendments to the

³⁷ Council Decision 2014/346/EU of 26 May 2014 on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention (OJ L 172, 12.6.2014, p. 28).

³⁸ COM(1998) 322 final.

MLC in order to improve the working conditions, health and safety and social protection for seafarers on board ships flying the flag of an EU Member State.

- (9) In amending Directive 2009/13/EC, the social partners' agreement of 5 December 2016 will bring the mandatory provisions of the 2014 ILO amendments to the MLC within the scope of enforcement Directive 2013/54/EU on flag State responsibilities, and of the EU law supervisory and monitoring system – and in particular of the Court of Justice of the European Union, in addition to the MLC supervisory system. This should make for greater compliance by Member States and shipowners.
- (10) Without prejudice to the provisions of the agreement on follow-up and review by the social partners at EU level, the European Commission will monitor the implementation of this Directive and the agreement.
- (11) The Member States may entrust social partners with the implementation of this Directive, where the latter jointly request this and as long as the Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (12) The Commission has informed the European Parliament pursuant to Article 155(2) of the TFEU by sending to it the text of its proposal for a Directive containing the agreement.
- (13) This Directive respects the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, and in particular Article 31 thereof.
- (14) This Directive is intended to improve the working conditions, health and safety and social protection of workers in the maritime transport sector, which is a cross-border sector operating under the flags of different Member States. Since its objectives cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the European Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5(4) of the Treaty on European Union, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements the agreement concluded between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on 5 December 2016 by amending Council Directive 2009/13/EC in line with the amendments of 2014 to the MLC, 2006 as approved by the International Labour Conference on 11 June 2014.

Article 2

In accordance with the Agreement between ECSA and ETF concluded on 5 December 2016 to amend Council Directive 2009/13/EC to accord with the amendments of 2014 to the Maritime Labour Convention, 2006 as approved by the International Labour Conference at its 103rd session, Geneva, 11 June 2014, the Annex to Council Directive 2009/13/EC is amended as follows:

(1) in the heading “Standard A2.5 – Repatriation”, “A2.5” is replaced by “A2.5.1”.

(2) the following Standard A2.5.2 is inserted:

‘Standard A2.5.2 - Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Agreement or the terms of the seafarers’ employment agreement, the shipowner:

(a) fails to cover the cost of the seafarer’s repatriation; or

(b) has left the seafarer without the necessary maintenance and support; or

(c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member State shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners’ and seafarers’ organisations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member State.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member State shall require that ships that fly its flag, and which are required under national laws to carry a Maritime Labour Certificate or do so at the request of the shipowner, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:

(a) name of the ship;

(b) port of registry of the ship;

(c) call sign of the ship;

- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of this Standard A2.5.2.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 of this Standard.

9. Having regard to Regulation 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10 of this Standard; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider

of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard’.

(3) in the heading “Standard A4.2 Shipowners’ liability”, “A4.2” is replaced by “A4.2.1” and the following paragraphs are added:

‘8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer’s employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

(b) there shall be no pressure to accept a payment less than the contractual amount;

(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;

(d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and

(e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner’s financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner’s financial security is cancelled or terminated.

11. Each Member State shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at

least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1'.

(4) the following Standard A4.2.2 is inserted:

'Standard A4.2.2 - Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures'.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by two years after the entry into

force of the Directive at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President