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from: General Secretariat
to: Permanent Representatives Committee / Council

Subject: 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
– Outcome of the European Parliament's proceedings (Strasbourg, 11 to 14 March 2013)

I. INTRODUCTION

The Rapporteur, Ms. Pervenche BERÈS (S&D, FR), presented a report consisting of 55 amendments (amendments 1 - 55) to the proposal for a Directive, on behalf of the Committee on Employment and Social Affairs.

In addition, 14 amendments (amendments 56 - 69) were tabled by the S&D, Greens/EFA, EUL/NGL (and others) political groups.

II. VOTE

When it voted on 13 March 2013 , without prior debate, the Parliament adopted the 69 amendments tabled, the text of which is annexed to this note.

The vote on the legislative resolution was postponed to a later session, thereby not closing the European Parliament's first reading and leaving open the possibility of reaching an agreement in first reading. The matter was then referred back to the Committee on Employment and Social Affairs, pursuant to Rule 57(2) of the European Parliament's Rules of Procedure.

Flag State responsibilities for the enforcement of Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations and the European Transport Workers' Federation on the Maritime Labour Convention *I**

Amendments adopted by the European Parliament on 13 March 2013 on the 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 (COM(2012)0134 – C7-0083/2012 – 2012/0065(COD))¹

(Ordinary legislative procedure: first reading)

Amendment 1

**Proposal for a directive
Recital 10**

Text proposed by the Commission

(10) Although Directive 2009/21/EC governs the flag State responsibilities by incorporating the IMO's flag State audit scheme into Union law and by introducing the certification of quality of national maritime authorities; a separate directive covering the maritime labour standards is deemed more appropriate and clearer to reflect the different purposes and procedures,

Amendment

(10) Although Directive 2009/21/EC governs the flag State responsibilities by incorporating the IMO's flag State audit scheme into Union law and by introducing the certification of quality of national maritime authorities; a separate directive covering the maritime labour standards is deemed more appropriate and clearer to reflect the different purposes and procedures. ***Therefore, Directive 2009/21/EC, the provisions of which apply only to IMO Conventions, should not be affected by the present Directive. In any case, Member States should continue to be able to 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***

¹ The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0037/2013).

this Directive.

Amendment 2

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Directive 2009/13/EC applies to seafarers on board ships flying the flag of a Member State. Member States should ***therefore monitor compliance with all the provisions of*** that Directive by ships flying their flag.

Amendment

(11) Directive 2009/13/EC applies to seafarers on board ships flying the flag of a Member State. 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*** that Directive ***concerning*** ships flying their flag. ***In establishing an effective system for monitoring mechanisms, including inspections, a Member State could grant authorisation to public institutions or other organisations within the meaning of MLC 2006.***

Amendment 3

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Under no circumstances should the application and/or interpretation of this Directive lead to a reduction in the level of protection currently enjoyed by workers under Union legislation.

Amendment 4

Proposal for a directive Article 1

Text proposed by the Commission

This Directive lays down rules to ensure that Member States effectively discharge their obligations as flag States to monitor compliance of ships flying their flag with

Amendment

This Directive lays down rules to ensure that Member States effectively discharge their obligations as flag States to monitor compliance of ships flying their flag with

Directive 2009/13/EC. This Directive is without prejudice to Directive 2009/21/EC *of the European Parliament and of the Council*.

Directive 2009/13/EC *and the Social Partners Agreement annexed thereto*. This Directive is without prejudice to Directive 2009/21/EC¹.

¹ *OJ L131, 28.5.2009, p. 132.*

Amendment 5

Proposal for a directive Article 2 – point b a (new)

Text proposed by the Commission

Definitions

Amendment

Definitions

(ba) “Directive 2009/13/EC” means that Directive and the Social Partners Agreement annexed thereto;

Amendment 6

Proposal for a directive Article 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) “maritime labour certificate”, “interim maritime labour certificate” and “declaration of maritime labour compliance” mean respectively the documents referred to in Standard A5.1.3, paragraph 9 of the Maritime Labour Convention, 2006 drawn up in the form corresponding to the models given in Appendix A5-II of that Convention;

Amendment 7

Proposal for a directive Article 3 – title

Text proposed by the Commission

Compliance monitoring

Amendment

Compliance monitoring *and certification*

Amendment 8

Proposal for a directive Article 3 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Each Member State shall ensure the enforcement of the obligations set out in Directive 2009/13/EC on ships that fly its flag.

Amendment 9

Proposal for a directive Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In establishing an effective system for the inspection and certification of maritime labour conditions, Member States may, where appropriate, authorise public institutions or other organisations (including those of another Member State, if the latter agrees) which they recognise to be competent and independent to carry out inspections or to issue certificates or to do both. In all cases, Member States shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.

Amendment 10

Proposal for a directive Article 3 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Each Member State shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 and Standards A5.1.3 and A5.14 of the Maritime Labour Convention, ensuring that the working

and living conditions for seafarers on ships flying its flag meet, and continue to meet, the standards in that Convention.

Amendment 11

Proposal for a directive Article 3 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member State whose flag it flies and that the requirements of Directive 2009/13/EC relating to working and living conditions of the seafarers have been met to the extent certified.

Amendment 12

Proposal for a directive Article 3 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Information about the system referred to in paragraph 1b of this Article, including the method used for assessing its effectiveness, shall be included in the Member States reports to the International Labour Office pursuant to Article 22 of the Constitution of that Office.

Amendment 13

Proposal for a directive Article 3 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

1e. Each Member State shall establish clear objectives and standards covering the administration of its inspection and certification systems, as well as adequate

overall procedures for its assessment of the extent to which those objectives and standards are being attained.

Amendment 14

Proposal for a directive Article 3 – paragraph 1 f (new)

Text proposed by the Commission

Amendment

1f. Each Member State shall require all ships that fly its flag to have a copy of Directive 2009/13/EC and the Social Partners Agreement annexed thereto available on board.

Amendment 15

Proposal for a directive Article 3 – paragraph 1 g (new)

Text proposed by the Commission

Amendment

1g. The interval between inspections shall not exceed three years.

Amendment 16

Proposal for a directive Article 4 – title

Text proposed by the Commission

Amendment

Staff in charge of compliance monitoring

Recognised organisations and their staff
in charge of compliance monitoring

Amendment 17

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that staff in charge of verifying the proper implementation of Directive 2009/13/EC has the training, competence, terms of reference, powers, status and independence

1. A Member State shall ensure that the ***institutions or other organisations (“recognized organisations”)*** referred to in Article 3(1a) and those members of ***their*** staff in charge of verifying the proper

necessary or desirable so as to enable them to carry out that verification and ensure compliance with that Directive.

implementation of Directive 2009/13/EC **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 that Directive. **The inspection or certification functions which the recognised organisations may be authorised to carry out shall come within the scope of the activities that are expressly referred to in paragraphs 1b to 1d as carried out by the Member State or a recognised organisation.**

Amendment 18

Proposal for a directive Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The European Maritime Safety Agency (EMSA) may assist Member States in the supervision of recognised organisations performing certification tasks on their behalf in accordance with Article 9 of Directive 2009/15/EC, without prejudice to the rights and obligations of flag States.

Amendment 19

Proposal for a directive Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Any authorisations granted with respect to inspections shall, as a minimum, empower the recognised organisation to require the deficiencies that it identifies in seafarers' working and living conditions to be rectified and to carry out inspections in this regard at the request of a port State.

Amendment 20

Proposal for a directive Article 4 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. Each Member State shall establish:
(a) a system to ensure the adequacy of work performed by recognised organisations. That system shall include information on all applicable national laws and regulations and relevant international instruments; and
(b) procedures for communication with and oversight of such organizations.

Amendment 21

Proposal for a directive Article 4 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Each Member State shall provide the International Labour Office with a current list of any recognised organisations that are authorised to act on its behalf and shall keep this list up to date. The list shall specify the functions that the recognised organisations have been authorised to carry out.

Amendment 22

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Maritime Labour Certificate

4a. Each Member State shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship,

including the measures for ongoing compliance to be included in the declaration of maritime labour compliance, have been inspected and meet the requirements of national laws or regulations or other measures implementing Directive 2009/13/EC and the Social Partners Agreement annexed thereto.

Amendment 23

Proposal for a directive Article 4 b – paragraph 1 (new)

Text proposed by the Commission

Amendment

Article 4b

Inspection and enforcement

1. Each Member State shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships that fly its flag comply with the requirements of Directive 2009/13/EC as implemented in national laws and regulations.

Amendment 24

Proposal for a directive Article 4 b – paragraph 2 (new)

Text proposed by the Commission

Amendment

2. Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 are set out in paragraphs 3 to 18 below.

Amendment 25

Proposal for a directive Article 4 b – paragraph 3 (new)

Text proposed by the Commission

Amendment

3. Each Member State shall maintain a

system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions, as set out in the declaration of maritime labour compliance, where applicable, are being followed, and that the requirements of Directive 2009/13/EC are met.

Amendment 26

Proposal for a directive Article 4 b – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. A Member State shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under paragraph 3. Where recognised organisations have been authorised to carry out inspections, a Member State shall require that personnel carrying out the inspection are qualified to undertake these duties and shall provide them with the necessary legal authority to perform their duties.

Amendment 27

Proposal for a directive Article 4 b – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. Adequate provision shall be made to ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out the verification and ensure the compliance referred to in paragraph 3.

Amendment 28

Proposal for a directive Article 4 b – paragraph 6 (new)

Text proposed by the Commission

Amendment

6. 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 Directive 2009/13/EC or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Member State shall take the steps necessary to investigate the matter and to ensure that action is taken to remedy any deficiencies found.

Amendment 29

Proposal for a directive Article 4 b – paragraph 7 (new)

Text proposed by the Commission

Amendment

7. Adequate rules shall be provided and effectively enforced by each Member State in order to guarantee that inspectors have the status and conditions of service which ensure that they are independent of changes of government and of improper external influences.

Amendment 30

Proposal for a directive Article 4 b – paragraph 8 (new)

Text proposed by the Commission

Amendment

8. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:
(a) to board a ship that flies the flag of a Member State;

(b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and

(c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of Directive 2009/13/EC (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

Amendment 31

Proposal for a directive Article 4 b – paragraph 9 (new)

Text proposed by the Commission

Amendment

9. Any action taken pursuant to paragraph 8(c) shall be subject to any right of appeal that may exist to a judicial or administrative authority.

Amendment 32

Proposal for a directive Article 4 b – paragraph 10 (new)

Text proposed by the Commission

Amendment

10. Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of Directive 2009/13/EC that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

Amendment 33

Proposal for a directive Article 4 b – paragraph 11 (new)

Text proposed by the Commission

Amendment

11. Inspectors 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 shall 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.

Amendment 34

Proposal for a directive Article 4 b – paragraph 12 (new)

Text proposed by the Commission

Amendment

12. Inspectors shall not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties.

In particular, inspectors shall:

- (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and***
- (b) without prejudice to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.***

Amendment 35

Proposal for a directive Article 4 b – paragraph 13 (new)

Text proposed by the Commission

Amendment

13. Inspectors shall submit a report of each inspection to the competent authority of the Member State. One copy of the report in English or in the working language of the ship shall be furnished to the master of the ship and another copy shall be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.

Amendment 36

Proposal for a directive Article 4 b – paragraph 14 (new)

Text proposed by the Commission

Amendment

14. The competent authority of each Member State shall maintain records of inspections of the conditions for seafarers on ships that fly its flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

Amendment 37

Proposal for a directive Article 4 b – paragraph 15 (new)

Text proposed by the Commission

Amendment

15. In the case of an investigation following a major incident, the report shall be submitted to the competent authority of the Member State concerned as soon as practicable, but not later than one month following the conclusion of the investigation.

Amendment 38

Proposal for a directive Article 4 b – paragraph 16 (new)

Text proposed by the Commission

Amendment

16. When an inspection is conducted or when measures are taken under this Article, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

Amendment 39

Proposal for a directive Article 4 b – paragraph 17 (new)

Text proposed by the Commission

Amendment

17. Compensation shall be payable in accordance with national laws and regulations for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case shall be on the complainant.

Amendment 40

Proposal for a directive Article 4 b – paragraph 18 (new)

Text proposed by the Commission

Amendment

18. Adequate penalties and other corrective measures for breaches of the requirements of Directive 2009/13/EC (including seafarers' rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by each Member State.

Amendment 41

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

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 Directive 2009/13/EC 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.

Amendment

1. If a Member State receives a complaint which it does not consider **to be** manifestly unfounded **under international labour law, such as the Maritime Labour Convention, or under Directive 2009/13/EC, it shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.**

If a Member State obtains evidence, **by means of an inspection,** that a ship that flies its flag does not conform to the requirements of Directive 2009/13/EC 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.

Amendment 42

**Proposal for a directive
Article 5 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. Personnel 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 ship owner, the ship owner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

Amendment 43

Proposal for a directive Article 5 a – paragraph 1 (new)

Text proposed by the Commission

Amendment

Article 5a

On-board complaint procedures

1. Member States shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of Directive 2009/13/EC (including seafarers' rights).

Amendment 44

Proposal for a directive Article 5 a – paragraph 2 (new)

Text proposed by the Commission

Amendment

2. Member States shall prohibit and penalise any kind of victimisation of a seafarer for filing a complaint.

Amendment 45

Proposal for a directive Article 5 a – paragraph 3 (new)

Text proposed by the Commission

Amendment

3. The provisions of this Article are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

Amendment 46

Proposal for a directive Article 5 a – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. Without prejudice to any wider scope that may be given in national laws or

regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of Directive 2009/13/EC (including seafarers' rights).

Amendment 47

Proposal for a directive Article 5 a – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. Each Member State shall ensure that, in its laws or regulations, appropriate on-board complaint procedures are in place to meet the requirements set out in paragraphs 1 to 3. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.

Amendment 48

Proposal for a directive Article 5 a – paragraph 6 (new)

Text proposed by the Commission

Amendment

6. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimisation of seafarers for filing complaints. The term “victimisation” covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

Amendment 49

Proposal for a directive Article 5 a – paragraph 7 (new)

Text proposed by the Commission

Amendment

7. In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

Amendment 50

Proposal for a directive Article 5 b – paragraph 1 (new)

Text proposed by the Commission

Amendment

Article 5b

Labour supplying responsibilities

1. Without prejudice to the principle of each Member State's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member State also has a responsibility to ensure the implementation of the requirements of this Article regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Article.

Amendment 51

Proposal for a directive Article 5 b – paragraph 2 (new)

Text proposed by the Commission

Amendment

2. Each Member State shall enforce the requirements of this Article applicable to the operation and practice of seafarer recruitment and placement services established on its territory through a system of inspection and monitoring and legal proceedings for breaches of licensing and other operational requirements provided for in paragraphs 4 and 6.

Amendment 56

Proposal for a directive Article 5 b – paragraph 3 (new)

Text proposed by the Commission

Amendment

3. Detailed requirements for the implementation of paragraph 1 are set out in paragraphs 7 to 18 below.

Amendment 52

Proposal for a directive Article 5 b – paragraph 4 (new)

Text proposed by the Commission

Amendment

4. Each Member State that operates a public seafarer recruitment and placement service shall ensure that the service is operated in an orderly manner that protects and promotes seafarers' employment rights as provided in Directive 2009/13/EC.

Amendment 57

Proposal for a directive Article 5 b – paragraph 5 (new)

Text proposed by the Commission

Amendment

5. Each Member State shall establish an effective inspection and monitoring system for enforcing its responsibilities under this Article to supply labour.

Amendment 53

**Proposal for a directive
Article 5 b – paragraph 6 (new)**

Text proposed by the Commission

Amendment

6. The competent authority of the Member State concerned shall closely supervise and control all seafarer recruitment and placement services operating in the territory of the Member State concerned. Any licences or certificates or similar authorisations for the operation of private services in the territory are granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of national laws and regulations.

Amendment 58

**Proposal for a directive
Article 5 b – paragraph 7 (new)**

Text proposed by the Commission

Amendment

7. Information about the system referred to in paragraph 4, including the method used for assessing its effectiveness, shall be included in the Member State's reports to the International Labour Office pursuant to Article 22 of the Constitution of that Office.

Amendment 59

**Proposal for a directive
Article 5 b – paragraph 8 (new)**

Text proposed by the Commission

Amendment

8. All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.

Amendment 60

**Proposal for a directive
Article 5 b – paragraph 9 (new)**

Text proposed by the Commission

Amendment

9. Seafarer recruitment and placement services operating in a Member State's territory shall conform to the standards set out in paragraphs 7 to 18.

Amendment 61

**Proposal for a directive
Article 5 b – paragraph 10 (new)**

Text proposed by the Commission

Amendment

10. Each Member State shall require, in respect of seafarers who work on ships that fly its flag, that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which the Maritime Labour Convention 2006 does not apply, ensure that those services conform to the requirements set out in paragraphs 7 to 18.

Amendment 62

**Proposal for a directive
Article 5 b – paragraph 11 (new)**

Text proposed by the Commission

Amendment

11. Where a Member State has private seafarer recruitment and placement services operating in its territory the primary purpose of which is the

recruitment and placement of seafarers or which recruit and place a significant number of seafarers, they shall be operated only in conformity with a standardised system of licensing or certification or other form of regulation. This system shall be established, modified or changed only after consultation with the shipowners' and seafarers' organisations concerned. In the event of doubt as to whether this Article applies to a private recruitment and placement service, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned. Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.

Amendment 63

Proposal for a directive Article 5 b – paragraph 12 (new)

Text proposed by the Commission

Amendment

12. The provisions of paragraph 11 shall also apply – to the extent that they are considered to be appropriate by the competent authority of the Member State, in consultation with the shipowners' and seafarers' organisations concerned – in the context of recruitment and placement services operated by a seafarers' organisation in the territory of the Member State for the supply of seafarers who are nationals of that Member State to ships which fly its flag. The services covered by this paragraph are those fulfilling the following conditions:

- (a) the recruitment and placement service is operated pursuant to a collective bargaining agreement between that organisation and a shipowner;*
- (b) both the seafarers' organisation and*

the shipowner are based in the territory of the Member State;

(c) the Member State has national laws or regulations or a procedure to authorise or register the collective bargaining agreement permitting the operation of the recruitment and placement service; and

(d) the recruitment and placement service is operated in an orderly manner and measures are in place to protect and promote seafarers' employment rights comparable to those provided in paragraph 14.

Amendment 64

Proposal for a directive Article 5 b – paragraph 13 (new)

Text proposed by the Commission

Amendment

13. Nothing in paragraphs 1 to 18 shall be deemed to:

(a) prevent a Member State from maintaining a free public seafarer recruitment and placement service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners, whether the service forms part of or is coordinated with a public employment service for all workers and employers; or

(b) impose on a Member State the obligation to establish a system for the operation of private seafarer recruitment

or placement services in its territory.

Amendment 65

Proposal for a directive Article 5 b – paragraph 14 (new)

Text proposed by the Commission

Amendment

14. A Member State adopting a system referred to in paragraph 11 of this Article shall, in its laws and regulations or other measures, at a minimum

(a) prohibit seafarer recruitment and placement services from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified;

(b) require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner; and

(c) ensure that seafarer recruitment and placement services operating in its territory:

(i) maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the

competent authority of the Member State;

(ii) make sure that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;

(iii) verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;

(iv) make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port;

(v) examine and respond to any complaint concerning their activities and advise the competent authority of the Member State of any unresolved complaint;

(vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the

relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

Amendment 66

Proposal for a directive Article 5 b – paragraph 15 (new)

Text proposed by the Commission

Amendment

15. The competent authority of the Member State concerned shall ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of seafarer recruitment and placement services, involving, as appropriate, representatives of shipowners and seafarers.

Amendment 67

Proposal for a directive Article 5 b – paragraph 16 (new)

Text proposed by the Commission

Amendment

16. Where a Member State has ratified the Maritime Labour Convention 2006 and a period of 12 months has passed, beginning on the day after registration of its ratification with the Director-General of the International Labour Office, it shall, in so far as practicable, advise its nationals on the possible problems of signing on a ship that flies the flag of a State which has not ratified the Maritime Labour Convention 2006 until it is satisfied that standards equivalent to those fixed by this Article are being applied. Measures taken to this effect by the Member State shall not be in contradiction with the principle of free movement of workers stipulated by the treaties to which the Member State and the other country concerned may be parties.

Amendment 68

Proposal for a directive Article 5 b – paragraph 17 (new)

Text proposed by the Commission

Amendment

17. Each Member State to which paragraph 16 applies shall require that shipowners of ships that fly its flag who use seafarer recruitment and placement services based in countries or territories in which the Maritime Labour Convention 2006, does not apply, ensure, as far as practicable, that those services meet the requirements of paragraphs 7 to 18.

Amendment 69

Proposal for a directive Article 5 b – paragraph 18 (new)

Text proposed by the Commission

Amendment

18. Nothing in paragraphs 7 to 18 shall be understood as diminishing the obligations and responsibilities of shipowners or of a Member State with respect to ships that fly its flag.

Amendment 54

Proposal for a directive Article 5 c (new)

Text proposed by the Commission

Amendment

Article 5c

Rendez-vous clause

From the date of the entry into force of the Agreement, the Commission shall ensure that it is incorporated into Union law and is applied by the Member States. The Commission shall take the necessary measures to that end.

Amendment 55

Proposal for a directive
Article 5 d (new)

Text proposed by the Commission

Amendment

Article 5d

Reports

Every five years, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive.

The report shall assess the performance of Member States as flag States and propose any additional measures necessary in order to transpose, and ensure compliance with, the Convention.