



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 October 2013

14420/13

**Interinstitutional File:
2012/0065 (COD)**

**CODEC 2200
MAR 149
TRANS 511
SOC 779
PE 433**

INFORMATION NOTE

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 first reading (Strasbourg, 7 to 10 October 2013)

I. INTRODUCTION

The Parliament on 13 March 2013 voted to adopt a number of amendments to the proposal but did not at that sitting proceed to a vote on the legislative resolution, thereby not closing the first reading and leaving open the possibility of reaching agreement in first reading¹. 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.

¹ Doc. 7325/13.

Subsequently, in accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the Rapporteur, Ms Pervenche BERÈS (S&D, FR), on behalf of the Committee, tabled one compromise amendment (amendment 70) to the proposal. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 8 October 2013, the plenary adopted the compromise amendment.

The amendment adopted correspond to what was agreed between the institutions and ought therefore to be acceptable to the Council. Consequently, the Council should be in a position to approve the the European Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendment is presented in the form of a consolidated text where added wordings are highlighted in *bold and italics*, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

¹ OJ C 145, 30.6.2007, p.5.

Flag State responsibilities for the enforcement of Council Directive 2009/13/EC implementing the Agreement on the Maritime Labour Convention *I**

European Parliament legislative resolution of 8 October 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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0134),
- having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0083/2012),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 11 July 2012¹,
- after consulting the Committee of the Regions,
- having regard to the undertaking given by the Council representative by letter of 12 June 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union;
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Transport (A7-0037/2013),

¹ OJ C 299, 4.10.2012, p. 153.

1. Adopts its position at first reading hereinafter set out¹;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ This position replaces the amendments adopted on 13 March 2013 (Texts adopted P7_TA-PROV(2013)0080).

P7_TC1-COD(2012)0065

Position of the European Parliament adopted at first reading on 8 October 2013 with a view to the adoption of Directive 2013/.../EU of the European Parliament and of the Council concerning *certain* flag State responsibilities for *compliance with and enforcement of the Maritime Labour Convention, 2006*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

¹ *OJ C -299, 4.10.2012, p. 153.*

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (1) Union action in the field of maritime transport aims, inter alia, to improve the shipboard living and working conditions of seafarers, *security and* safety at sea and to prevent pollution caused by maritime accidents.
- (2) The Union is aware of the fact that most accidents at sea are directly caused by human factors, especially fatigue.
- (3) One of the main objectives of the maritime safety policy of the Union is to eradicate substandard shipping.
- (4) On 23 February 2006, the International Labour Organisation, desiring to create a single, coherent *and up-to-date instrument that also embodies* the fundamental principles to be found in other international labour conventions, adopted the Maritime Labour Convention, 2006 (*MLC 2006*)

¹ *Position of the European Parliament of 8 October 2013.*

- (5) *According to Article VIII thereof, the MLC 2006 is to come into force 12 months after the date on which there have been registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of 33 per cent. This condition was fulfilled on 20 August 2012, and MLC 2006 therefore entered into force on 20 August 2013.*
- (6) Council Decision 2007/431/EC¹ authorised the Member States to ratify *MLC 2006*, and Member States are urged to do so as soon as possible.
- (7) *MLC 2006* sets out *minimum global standards to ensure the right of all seafarers to decent living and working conditions*, irrespective of their nationality and irrespective of the flag of the ships *on which they serve, and to establish a level playing field.*
- (8) *Various parts of MLC 2006 have been introduced into different Union instruments both as regards flag State and port State obligations. The aim of this Directive is to introduce certain compliance and enforcement provisions, envisaged in Title 5 of MLC 2006, which relate to those parts of MLC 2006 in respect of which the required compliance and enforcement provisions have not yet been adopted. Those parts correspond to the elements set out in the Annex to Council Directive 2009/13/EC².*

¹ Council Decision 2007/431/EC of 7 of June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

² 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).

- (9) *Directive 2009/13/EC* implements the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ("*the Agreement*"), *annexed thereto. This Directive is without prejudice to Directive 2009/13/EC and should therefore ensure compliance with more favourable provisions of Union law in conformity with Directive 2009/13/EC.*

- █
- (10) Although Directive 2009/21/EC *of the European Parliament and of the Council*¹ governs █ flag State responsibilities, incorporating the *voluntary IMO Member States* audit scheme into Union law, and introducing the certification of quality of national maritime authorities █, a separate Directive covering the maritime labour standards *would be* more appropriate and *would more clearly* reflect the different purposes and procedures, without affecting *Directive 2009/21/EC.*

¹ Directive 2009/21/EC *of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).*

- (11) *Directive 2009/21/EC applies to IMO Conventions. In any event, Member States could develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of their maritime administration falling within the scope of this Directive.*
- (12) *Member States should ensure the effective discharge of their obligations as flag States with respect to the implementation, by ships flying their flag, of the relevant parts of MLC 2006. In establishing an effective system for monitoring mechanisms, including inspections, a Member State could, where appropriate, grant authorisation to public institutions, or to other organisations within the meaning of Regulation 5.1.2 of MLC 2006, under the conditions set out therein.*

- █
- (13) *According to Article 2(3)(c) of Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹ the mandate of the European Maritime Safety Agency includes, as a core task, that the Agency should work with the Member States to provide, at the request of a Member State, appropriate information in order to support the monitoring of recognised organisations acting on behalf of that Member States, without prejudice to the rights and obligations of the flag State.*

¹ *Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).*

- (14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale *and* effects of the action, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty *on European Union*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (15) *Under no circumstances should the application of this Directive lead to a reduction in the level of protection currently enjoyed by seafarers under Union law,*

■

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter

This Directive lays down rules to ensure that Member States effectively discharge their obligations as flag States *with respect to the implementation of the relevant parts of MLC 2006*. This Directive *is* without prejudice to *Directives 2009/13/EC and 2009/21/EC, and to any higher standards for living and working conditions for seafarers set out therein*.

Article 2
Definitions

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

■

“relevant parts of MLC 2006” means the parts of MLC 2006 of which the content shall be considered as corresponding to the provisions in the Annex to Directive 2009/13/EC.

Article 3

Monitoring of compliance

1. Member States shall ensure that ***effective and*** appropriate ***enforcement*** and monitoring mechanisms, ***including inspections at the intervals provided for in MLC 2006***, are established ■ in order to ensure that the living and working conditions of seafarers on ships flying their flag meet, and continue to meet, the requirements of ***the relevant parts of MLC 2006***.

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

3. *When fulfilling their obligations under this Article, Member States may, where appropriate, authorise public institutions or other organisations, including those of another Member State, if the latter agrees, which they recognise as having sufficient capacity, competence and independence, to carry out inspections. In all cases, a Member State shall remain fully responsible for the inspection of the living and working conditions of the seafarers concerned on ships that fly the flag of that Member State. This provision is without prejudice to Directive 2009/15/EC of the European Parliament and of the Council¹.*
4. *Member States shall establish clear objectives and standards covering the administration of their inspection systems, as well as adequate overall procedures for their assessment of the extent to which those objectives and standards are being attained.*
5. *Member States shall ensure that seafarers on board ships flying the flag of that Member State have access to a copy of the Agreement. The access may be provided electronically.*

¹ Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p. 47).

Article 4

Personnel in charge of compliance monitoring

1. Member States shall ensure that *personnel, including staff from institutions or other organisations ('recognised organisations within the meaning of MLC 2006), authorised to carry out inspections in accordance with Article 3(3) and* in charge of verifying the proper implementation of *the relevant parts of MLC 2006, have* the training, *competence,* terms of reference, *full legal authority,* status and independence necessary or desirable to enable them to carry out that verification and to ensure compliance with *the relevant parts of MLC 2006. In accordance with MLC 2006, inspectors shall be empowered to take steps, as appropriate, to prohibit a ship from leaving port until necessary actions are taken.*

2. *All authorisations granted with respect to inspections shall, as a minimum, empower the recognised organisation to require the rectification of deficiencies that it identifies in seafarers' living and working conditions, and to carry out inspections in that regard at the request of a port State.*

3. *Each Member State shall establish:*
 - (a) *a system to ensure the adequacy of work performed by recognised organisations, which includes information on all applicable national laws and regulations and relevant international instruments; and*
 - b) *procedures for communication with and oversight of such organisations.*
4. *Each Member State shall provide the International Labour Office with a current list of any recognised organisations 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.*

Article 5

On-board complaint procedures, handling of complaints and corrective measures

1. *Each Member State shall ensure that, in its laws or regulations, appropriate on-board complaint procedures are in place.*

2. If a Member State receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of *the relevant parts of MLC 2006* or that there are serious deficiencies in its implementing measures, that Member State shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
3. *Personnel* dealing with *or becoming aware of* complaints shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' living and working 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.

Article 6

Reports

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

2. *No later than ...^{*}, the Commission shall submit a report to the European Parliament and to the Council on the implementation and application of Regulation 5.3 of MLC 2006 regarding labour-supplying responsibilities. If appropriate, the report may include proposals for measures to enhance living and working conditions in the maritime sector.*

Article 7

Transposition

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

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

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

^{*} *OJ: Please insert date: 5 years after the date of entry into force of this Directive.*

^{**} *OJ: Please insert date: 15 months after the date of entry into force of this Directive.*

Article 8

Entry into force

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

Article 9

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President