



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 April 2012

8880/12

**Interinstitutional File:
2012/0062 (COD)**

**MAR 46
TRANS 120
SOC 290**

NOTE

From: Council Secretariat
To: Delegations

No. Cion prop.: COM(2012) 129 final

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL amending Directive 2009/16/EC on port State control

Delegations will find in Annex the text of the draft Directive as it stands following the Shipping Working Party meeting of 17-18 April 2012.

General scrutiny reservation: All delegations

Parliamentary scrutiny reservation: UK

2012/0062 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/16/EC on port State control

(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,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006 (the Convention), desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

- (2) Council Decision 2007/431/EC of 7 June 2007³ has authorised the Member States to ratify the Convention. Member States should ratify it as soon as possible.
- (3) The Convention sets out maritime labour standards for all seafarers regardless of their nationality and of the flag of the ships.
- (4) An important part of the Standards of the Convention are implemented within EU law by means of Council Directive 2009/13/EC of 16 February 2009 and Directive 1999/63/EC. Those standards of the Maritime Labour Convention which are covered by the scope of Directive 2009/13/EC and/or Directive 1999/63/EC should be implemented by the Member States in line with the mentioned Directives.
- (5) The Convention contains enforcement provisions defining the responsibilities of port States. In order to protect safety and to avoid distortions of competition, Member States should be allowed to verify compliance with the provisions of the Convention by any ship calling at their ports, irrespective of the State in which they are registered.
- (6) Port State control is governed by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control⁴, which should include the Convention among the conventions whose implementation is verified by Member States' authorities in Union ports.
- (7) The rules of the Union should also reflect the procedures set out in the Convention with regard to the handling of complaints relating to the matters it deals with.

³ OJ L 161, 22.6.2007, p. 63

⁴ OJ L 131, 28.5.2009, p. 57.

- (8) In order to ensure uniform conditions for its implementation, Directive 2009/16/EC should be amended in order to confer implementing powers on the Commission. The Commission should be entitled to adopt implementing acts for the use of a harmonised electronic format for the reporting and follow-up of such complaints by port State authorities, as well as for the establishment of the ship risk profile criteria based on article 10 of Directive 2009/16/EC. This is in fact a highly technical exercise to be carried out in the framework of the principles and criteria which have been established by that Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁵.
- (9) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annex VI to Directive 2009/16/EC containing the list of the 'Instructions' adopted by the Paris MOU, with a view to keeping the procedures applicable and enforceable in the territory of the Member States, in line with those agreed upon at international level. The possibility for the Commission to swiftly update those procedures would contribute to achieving a global level-playing field for shipping. It is of particular importance that the Commission should carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (10) Part of the obligations contained in this Directive will not be applicable to Member States without sea shores and sea ports. Consequently, the only obligations which will be applicable to Austria, the Czech Republic, Hungary, Luxembourg and Slovakia are those obligations concerning ships flying the flag of those Member States, without prejudice to Member States' duty of cooperation to ensure continuity between maritime and other modal traffic management services.

⁵ OJ L 55, 28.2.2011, p. 13.

(11) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

(12) Directive 2009/16/EC should therefore be amended accordingly.

(13) This Directive should enter into force on the same date as the Maritime Labour Convention.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/16/EC

Directive 2009/16/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) in point 1, the following point (i) is added:

'(i) the Maritime Labour Convention, 2006;'

(b) in point 3, the following words are added at the end of the sentence:

'or its up-to-date version'.

(c) in point 18⁶, the following words are added at the end of the sentence:

'in its up-to-date version.'

(d) in point 21, the following words are added at the end of the sentence:

'in its up-to-date version.'

⁶ FR requested to clarify possible divergences in the definition of "company" in the existing Directive and MLC2006.

(e) the following points 23 and 24 are added:

'(23) "Maritime labour certificate" means the certificate referred to in Regulation 5.1.3 of the Maritime Labour Convention.'

(24) "Declaration of maritime labour compliance" means the declaration referred to in Regulation 5.1.3 of the Maritime Labour Convention.'

(f) the following paragraph is added:

'All the references to the Conventions referred to in this Directive, including for certificates and other documents, shall be deemed to be references to those Conventions in their up-to-date versions'.

(2) In Article 3⁷, the following paragraph 5 is added:

"5. The application and/or interpretation of this Directive shall under no circumstances constitute grounds for justifying a reduction in the general level of protection of workers under Union social legislation."

(3) ⁸In Article 8, paragraph 4 is deleted.

(4) In Article 10, paragraph 3 is replaced by the following:

'3. Implementing powers shall be conferred on the Commission to establish the methodology for assessing generic and historical risk parameters provided for therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

(5) In Article 14, paragraph 4 is replaced by the following:

'4. The scope of an expanded inspection, including the risk areas to be covered, is set out in Annex VII. Implementing powers shall be conferred on the Commission to determine the detailed features to be checked in the risk areas indicated in this Annex. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

⁷ FR suggested to clarify the term "crew" as it appears in Article 3.1 of the existing Directive.

⁸ Scrutiny reservations on pts (3) to (8): EL, ES, FR, IE, NL, PL, UK

- (6) In Article 15, paragraph 4 is replaced by the following:
'4. Implementing powers shall be conferred on the Commission to determine in detail harmonised modalities of putting into effect the procedures described in the Instructions referred to in Annex VI, including with respect to the checks referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'
- (7) The following Article 18a is inserted :

'Article 18a

Complaints related to the Maritime Labour Convention

1. Where a complaint **by a seafarer** related to matters covered by the Maritime Labour Convention has not been resolved at the ship-board level, the port State control officer shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action. A report of the inspection shall be transmitted by electronic means to the inspection database referred to in Article 24.
2. ~~In order to ensure uniform conditions for the implementation of this Article, implementing powers shall be conferred on the Commission regarding the setting up of a harmonised electronic format and procedure for the reporting of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).~~

Where the complaint has not been resolved following action taken in accordance with paragraph 1, the port State shall transmit a copy of the authorized officer's report to the Director-General of the International Labour Office. The report must be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate shipowners' and seafarers' organizations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.

3. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

4. In order to ensure uniform conditions for the implementation of this Article, implementing powers shall be conferred on the Commission regarding the setting up of a harmonised electronic format and procedure for the reporting of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

(8) In Article 19, the following paragraph is added is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. In the case of deficiencies which are clearly hazardous to safety, health or the environment and/or constitute a serious or repeated breach of the Maritime Labour Convention requirements (including seafarers's rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped.

The detention order or stoppage of an operation shall not be lifted:

- until the hazard is removed or until the competent authority establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment;

and/or

- the competent authority has accepted a plan of action to rectify the non conformities related to the Maritime Labour Convention and is satisfied that the plan will be implemented in an expeditious manner

(b) the following paragraph is added:

'11. If a ship is prevented from sailing due to serious or repeated breach of the maritime Labour Convention ~~On matters covered by the Maritime Labour Convention~~, the competent authority shall also inform forthwith the appropriate shipowners and seafarers' organisations in the port State in which the inspection was carried out.'

(9) In Article 23, paragraph 5 is replaced by the following:

'5. Implementing powers shall be conferred on the Commission to establish harmonised⁹ forms for the reporting of anomalies by pilots and port authorities and the recording of follow-up actions, the procedures to be followed, and the modalities and technical media to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

(10) In Article 27, the second paragraph is replaced by the following:

"Implementing powers shall be conferred on the Commission to establish the modalities of publication of the information referred to in the above paragraph, the criteria for aggregating the relevant data and the frequency of updates. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 31(2).'

(11) The following Articles 30a and 30b are inserted

'Article 30a

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 30b, concerning amendments to Annex VI to this Directive, in order to add to the list set out in that Annex further instructions relating to port State control adopted by the Paris MOU Organisation.¹⁰

⁹ IT requested clarification on the deletion of the term "electronic".

¹⁰ UK requested to specify that this provision only refers to changes stemming from Paris MoU. The Commission replied that the way this Article is worded does not allow any other interpretation.

Article 30b
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 30a shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of power referred to in Article 30a may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 30a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

(12) Article 31 is replaced by the following:

'Article 31

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 1406/2002 of the European Parliament and the Council. That Committee shall be a committee withing the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where, in the cases laid down in paragraphs 2 and 3 above, the opinion of the committee is to be obtained by written procedure, that procedure shall be determined without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.'

(13) Article 32 is repealed.

(13a) In Article 33, the reference to Article 8(4) is deleted.

(14) In point II 2B of Annex I, the following indents are added:¹¹

'- Ships flying the flag of a State which has not ratified one or more of the Conventions listed under Article 2 point 1.';¹²

'- Ships whose documentation shows no evidence that an agreed plan of action to rectify non conformities as referred to in Standard A5.2.1(6) of the MLC has been implemented.'

(15) In Annex IV, the following points 45 and 46 are added:

'45. Maritime labour certificate (see ILO Maritime Labour Convention (MLC)) ;

46. Declaration of labour compliance (ILO MLC).'

¹¹ Reservation: FR, IE, MT, NL

¹² Reservation: UK

(16) In Annex V point A, the following points 16, 17 and 18 are added: ¹³

'16. The MLC required documents are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by the MLC or are otherwise invalid.

17. The working and living conditions on the ship do not conform to the requirements of the MLC.

18. **There are reasonable grounds to believe that** ~~the~~ the ship has changed flag for the purpose of avoiding compliance with the MLC.'

(17) In point 3.10. of Annex X, the following points 8 and 9 are added:

'8. The conditions on board are clearly hazardous to the safety, health or security of seafarers;

'9. The non conformity constitutes a serious or repeated breach of the requirements of the MLC (including seafarer's rights).

Article 2

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 12¹⁴ months after the date of entry into force of this Directive. 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 shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 3

Entry into force

This Directive shall enter into force on the date of entry into force of the Maritime Labour Convention, 2006.

¹³ Reservation: MT

¹⁴ ES requested 18 months, LT requested a longer period.

Article 4
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
