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From: The Presidency

To: COREPER/Council

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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

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control

- *Progress report*

1. Introduction

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

The purpose of the above proposals is to bring the European Union legislation in line with the enforcement and compliance rules foreseen by Title V of the Maritime Labour Convention and thereby to integrate rules regarding the responsibilities of flag States and port States into EU law.

The **Maritime Labour Convention** (MLC 2006) was adopted by the International Labour Organisation (ILO) on 23 February 2006. MLC 2006 provides comprehensive rights and protection at work for all seafarers regardless of their nationality and the flag of the ship. It aims to both achieve decent working conditions for seafarers and secure fair competition for quality shipowners. It applies to international shipping and covers essential matters such as the minimum requirements for seafarers to work on board a ship (Title I of MLC 2006), conditions of employment (Title II), accommodation, recreational facilities, food and catering (Title III), health protection, medical care, welfare and social security protection (Title IV) and compliance and enforcement (Title V).

On 16 February 2009, the Council adopted Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on MLC 2006. The legal basis for that Directive is Article 155 of the Treaty on the functioning of the European Union (under Title X, "Social policy"). Directive 2009/13/EC complements the EU *acquis* as regards the labour standards by incorporating the relevant provisions establishing rights for seafarers contained in Titles I, II, III and IV of MLC 2006. However, the European social partners do not have the power to include in their agreement the enforcement provisions contained in Title V of MLC 2006.

The **proposal on the responsibilities of flag States** aims at ensuring that Directive 2009/13/EC is enforced and transposes the relevant enforcement provisions (Title V) of MLC 2006 into EU legislation. To this end, it is foreseen to require Member States to apply Directive 2009/13/EC when they wield their powers as flag States in conjunction with Directive 2009/21/EC on compliance with flag State requirements.

The **proposal on port State control** amends Directive 2009/16/EC *inter alia* by incorporating the requirements established by MLC 2006, namely by:

- including the maritime labour certificate and the declaration of maritime labour compliance among the documents to be checked by inspectors;
- extending the scope of inspections to new items (e.g. the existence of an adequate labour contract signed by both parties for each seafarer with the required clauses in the contract); and
- extending the scope of investigation in case of complaints and providing for the adequate procedure.

2. Work within the Council

The proposals were first examined by the Shipping Working Party on 17-18 April 2012. Since then, considerable progress has been made, despite the relatively short time period available. The Presidency has presented revised versions of the two proposals in the light of the discussions in the Working Party. For ease of reference, the latest versions are to be found in Annex I and Annex II to this report.

On the whole, delegations welcome and are positively inclined towards the proposals.

Nevertheless, some general concerns have been expressed by delegations which apply to both proposals and in particular:

- the absence of impact assessments;
- the necessity to avoid putting additional administrative burdens on public administrations and the shipping industry at this time of economic crisis;
- the need to bring the text of the draft Directives more in line with MLC 2006 by incorporating, in certain instances, its exact wording.

Based on the examination so far of the proposals by the Shipping Working Party, the Presidency draws the following specific conclusions:

a) Proposal for a Directive concerning flag State responsibilities

A number of delegations have questioned the absence of a possibility to exempt ships of less than 200 GT from regular inspections. They argue that such exemptions are provided for in MLC 2006.

One delegation has requested that the scope of the Directive be enlarged and that it should tackle issues such as shipowner's liabilities, certification procedures for vessels, manning companies, social security and minimum staffing levels as well.

Some delegations have also asked for clarification on how the different legal bases of the proposal at hand (TFEU Article 100(2)) and that of Directive 2009/13/EC (TFEU Article 155) interlink.

One delegation questions whether a separate directive is necessary or whether it would be more appropriate to simply amend Directive 2009/13/EC.

Finally, concerning the transposition deadline, a number of delegations have asked for a longer period (18 months instead of 12 months as proposed by the Commission).

In its latest revised version of the text, the Presidency is striving to meet some of the concerns expressed by the Member States. It should be noted, however, that the examination is still at an early stage and that further suggestions for revisions to the proposal will be made. In particular, the Presidency will – in close cooperation with the Commission – further reflect on whether it would be appropriate to provide for more flexibility when it comes to checks and monitoring mechanisms for smaller ships (less than 200 GT). The Presidency will also propose to extend the transposition period from 12 to 18 months in line with the requests of delegations.

b) Proposal for a Directive amending Directive 2009/16/EC on port State control

Some delegations ask for clarification of whether Member States which have not ratified MLC 2006 can carry out port State controls on the basis of the amended Directive. In other words they question the relationship between international and EU law in this specific case.

Another question of general concern is the relation between the definitions of "crew" and "company" in the port State control Directive and the slightly different definitions of "seafarer" and "shipowner" in MLC 2006, respectively. The Presidency has tried to solve the first question through the insertion of an interpretative recital and will work further towards an appropriate solution for the second question.

The Commission proposes to introduce a so-called "non-regression clause" which specifies that "*[t]he application and/or interpretation of [Directive 2009/16/EC as amended] shall under no circumstances constitute grounds for Member States for justifying a reduction in the general level of protection of workers under Union social legislation.*". The Commission argues that much EU legislation in the field of employment law contains such clauses. However, several delegations find this provision too broad and unclear (in particular the general reference to "Union social legislation"). The Presidency will look further into possible ways of clarifying this provision.

Furthermore, the proposal contains a number of provisions conferring implementing powers on the Commission. According to the Commission, those provisions are not introducing any new elements or conferring extended powers on the Commission, but should merely be seen as an adaptation to the new comitology procedures put in place after the entry into force of the Lisbon Treaty. Nevertheless, many delegations have expressed concerns on the wording of those provisions, which they believe are describing the implementing measures in a too detailed manner. The risk is, they argue, that Member States will face more detailed rules (e.g. binding "check-lists") leading to additional administrative burdens. They are asking for wording which is closer to the more general terms of the current port State control Directive.

As for the provision on delegated acts, giving the Commission the possibility to update the list of instructions adopted by the Paris Memorandum of Understanding on Port State Control (Article 15 and Annex VI of the current Directive), some delegations have voiced strong concerns. In particular, the question has been raised whether these instructions are being made mandatory through their inclusion in the Directive, though they are actually only recommendations.

The Presidency has made efforts to address the concerns expressed in its proposed revisions (including setting a time-limit for the delegation of power to the Commission), but notes that certain suggestions made by delegations might actually have the effect of giving the Commission a broader margin of discretion when proposing implementing and delegated acts. It should be noted that the Commission has a reservation on all changes to the provisions on implementing and delegated acts.

As regards the procedure for handling complaints related to MLC 2006, several delegations have asked for wording which is closer to that of MLC 2006. Similar requests have been made as far as provisions regarding rectification and detention is concerned. To a large extent, the revisions proposed so far by the Presidency take those requests into account. However, further analysis is needed to find formulations which use as far as possible the wording of MLC 2006 while respecting the terminology and structure of the port State control Directive as a whole.

A more controversial subject is a proposed amendment to Annex I to the port State control Directive, according to which ships flying the flag of States which have not ratified a whole set of Conventions (including MLC 2006) would be subject to a form of constant inspection regime, *i.e.* they could be inspected regardless of the period since their last periodic inspection. A majority of delegations question this proposal. Among the arguments put forward are that it might lead to a kind of "harassment", where a ship is inspected in every single port of call, that it can be seen as a sort of "punishment" for non-ratifying States, and that the heading "unexpected factors" – under which the Commission proposes to put this provision – is not appropriate, because non-ratification of a convention cannot under any circumstances be considered as an unexpected factor.

The Commission has undertaken to further explain how this inspection regime would function and its possible impact. While waiting for this analysis, the Presidency has chosen not to suggest a revision or deletion of this provision, despite the strong opposition from delegations.

It is the Presidency's intention to continue working on the proposal to further advance the work and prepare the ground for an early adoption.

3. Conclusion

Coreper is invited to examine and endorse this progress report and transmit it to the TTE Council on 7 June 2012.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(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,

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union action in the field of maritime transport aims, inter alia, at improving shipboard living and working conditions of seafarers, safety at sea and the prevention of pollution caused by maritime accidents.
- (2) The Union is aware of the fact that most accidents at sea are directly caused by human factors, especially fatigue.
- (3) One of the main objectives of the maritime safety policy of the Union is to eradicate substandard shipping.
- (4) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006 (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.
- (5) Council Decision 2007/431/EC of 7 June 2007³ has authorised the Member States to ratify the Convention. Member States are urged to ratify it as soon as possible
- (6) The Convention sets out maritime labour standards for all seafarers regardless of their nationality and of the flag of the ships.
- (7) Council Directive 2009/13/EC of 16 February 2009⁴ implements 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 (the Agreement).

³ OJ L 161, 22.6.2007, p. 63.

⁴ OJ L 124, 20.5.2009, p. 30.

- (8) Directive 2009/13/EC was adopted on the basis of Article 155 of the Treaty.
- (9) Since agreements concluded by virtue of Article 155 of the Treaty to be implemented by Council decisions can only cover matters defined by Article 153 of the Treaty, certain provisions of the Convention relating to flag State responsibilities for the enforcement of the Convention could not be part of the social agreement implemented by Directive 2009/13/EC. Those provisions should be integrated into Union law by virtue of this Directive.
- (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,
- (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.
- (12) For the control of the effective enforcement of Directive 2009/13/EC, it is necessary that Member States verify through regular inspections, monitoring and other control measures, that ships that fly their flag comply with the requirements of Directive 2009/13/EC.
- (13) 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.

- (14) Since this Directive enforces Directive 2009/13/EC, this Directive should enter into force on the same date as Directive 2009/13/EC,

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 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 Council⁵.

Article 2

Definitions

For the purpose of this Directive, the relevant definitions set out in the Annex to Directive 2009/13 shall apply.

a) [...]

b) [...]

Article 3

Compliance monitoring

Member States shall ensure that appropriate checks and monitoring mechanisms are established and that effective and adequate inspections are carried out to ensure that the conditions of seafarers on ships flying their flag meet, and continue to meet, the requirements of Directive 2009/13/EC.

⁵ OJ L131, 28.5.2009, p. 132.

Article 4

Personnel in charge of compliance monitoring

Member States shall ensure that personnel in charge of verifying the proper implementation of Directive 2009/13/EC has 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.

Article 5

Handling of complaints and corrective measures

1. If a Member State receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of 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.
2. Personnel in charge of dealing with complaints shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 12 months after its entry into force. They shall forthwith communicate to the Commission the text of those provisions.
2. 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.
3. 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 7

Entry into force

This Directive shall enter into force on the date of entry into force of Directive 2009/13/EC.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

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 Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

- (1) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006 (MLC 2006), 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.
- (2) Council Decision 2007/431/EC of 7 June 2007⁸ has authorised the Member States to ratify MLC 2006. Member States should ratify it as soon as possible.
- (3) MLC 2006 sets out maritime labour standards for all seafarers regardless of their nationality and of the flag of the ships they serve.
- (3a) The terms "seafarer" and "crew" are not always used with an identical meaning in the relevant international conventions. It is therefore appropriate in Directive 2009/16/EC, as amended by this Directive, rather than to define those terms, to understand their meaning in each instance in the way that is defined in or understood in relation to the relevant international conventions. This leads to an understanding where the terms "seafarer" and "crew" could refer to the same category of personnel.
- (4) An important part of the Standards of MLC 2006 are implemented within Union law by means of Council Directive 2009/13/EC of 16 February 2009⁹ and Council Directive 1999/63/EC of 21 June 1999¹⁰. Those standards of MLC 2006 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 those Directives.

⁸ Decision 2007/431/EC authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

⁹ 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 (OJ L 124, 20.5.2009, p. 30).

¹⁰ Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) (OJ L 167, 2.7.1999, p. 33).

- (5) MLC 2006 contains enforcement provisions defining the responsibilities of States exercising port State control obligations. In order to protect safety and to avoid distortions of competition, Member States should be allowed to verify compliance with the provisions of MLC 2006 by any ship calling at their ports, irrespective of the State in which it is registered.
- (6) Port State control is governed by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009¹¹, which should include MLC 2006 among the conventions the implementation of which is verified by Member States' authorities in Union ports.
- (7) The rules of the Union should also reflect the procedures set out in MLC 2006 with regard to the handling of complaints relating to the matters dealt with in MLC 2006.
- (8) In order to ensure uniform conditions for the implementation of Directive 2009/16/EC, that Directive should be amended so as 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 by port State authorities of complaints related to MLC 2006, as well as for the establishment of the ship risk profile criteria based on Article 10 of Directive 2009/16/EC. This is 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 powers¹².

¹¹ OJ L 131, 28.5.2009, p. 57.

¹² OJ L 55, 28.2.2011, p. 13.

- (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 Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, in its up-to-date version, ("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 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 to the Council.
- (10) [...]
- (11) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (12) Directive 2009/16/EC should therefore be amended accordingly.
- (13) This Directive should enter into force on the same date as MLC 2006,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/16/EC

Directive 2009/16/EC is hereby amended as follows:

(1) Article 2 is amended as follows:

(-a) point (g) is deleted;

(a) in point 1, the following points are added:

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

(j) the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 2001).';

(b) [...]

(c) [...]

(d) [...]

(e) the following points are added:

'23. "Maritime labour certificate" means the certificate referred to in Regulation 5.1.3 of MLC 2006.

24. "Declaration of maritime labour compliance" means the declaration referred to in Regulation 5.1.3 of MLC 2006.';

(f) the following paragraph is added:

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

(2) In Article 3, the following paragraph is added:

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

(3) In Article 8, paragraph 4 is replaced by the following:

'4. The Commission shall adopt detailed measures to ensure uniform conditions for the application of the provisions of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

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

'3. The Commission shall adopt detailed measures necessary for the implementation of this Article, in particular

(a) the flag State criteria;

(b) the company performance criteria.

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. The Commission shall adopt detailed measures to ensure uniform conditions for the application of Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

- (6) In Article 15, paragraph 4 is replaced by the following:

'4. The Commission may adopt detailed measures to ensure uniform conditions for the application of the provisions of paragraphs 1 and 2 of this Article. 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 MLC 2006

1. A complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation.
2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided, under Title 5 in the Annex to 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*, have been explored. The inspector may also conduct a more detailed inspection in accordance with Article 13.
3. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

4. In the event that the investigation or the inspection reveals a non-conformity that falls within the scope of Article 19, the provisions of that Article shall apply.

5. Where a complaint by a seafarer related to matters covered by MLC 2006 has not been resolved at the ship-board level, the inspector shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action submitted by that State. A report of the inspection shall be transmitted by electronic means to the inspection database referred to in Article 24.

6. Where the complaint has not been resolved following action taken in accordance with paragraph 5, the port State shall transmit a copy of the inspector'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, in accordance with Annex XII.

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.

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

8. 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).

9. This Article shall be without prejudice to Article 18.

* OJ L 124, 20.5.2009, p. 30.!

(8) Article 19 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 MLC 2006 requirements (including seafarers' rights), the competent authority 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;

or

– the competent authority has accepted a plan of action to rectify the non conformities related to MLC 2006 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 requirements of MLC 2006, 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 adopt measures for the implementation of this Article, including harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and 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).'

(10) In Article 27, the second subparagraph 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 first paragraph, the criteria for aggregating the relevant data and the frequency of updates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).'

(11) The following Articles 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.

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 power to adopt delegated acts referred to in Article 30a shall be conferred on the Commission for a period of five years from ...*. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
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 to revoke 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 two 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 two months at the initiative of the European Parliament or of the Council.!

* OJ: Please insert date: the date of entry into force of this amending Directive.

(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 within the meaning of Regulation (EU) No 182/2011.
2. [...]
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.
4. Where, in the cases laid down in paragraph 3, the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated 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) Article 33 is replaced by the following:

'Article 33
Implementing rules

When establishing the implementing rules referred to in Articles 8(4), 10(3), 14(4), 15(4), 18a(8), 23(5) and 27 in accordance with the procedures referred to in Article 31(3), the Commission shall take specific care that those rules take into account the expertise and the experience gained with the inspection system in the Union and building upon the expertise of the Paris MOU!.

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

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

'– Ships for which a plan of action to rectify non conformities as referred to in Standard A5.2.1(6) of MLC 2006 has been agreed but not checked by an inspector.'.

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

'45. Maritime labour certificate.

46. Declaration of maritime labour compliance, parts I and II.'

(16) In Annex V point A, the following points are added:

'16. The MLC 2006 required documents are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by MLC 2006 or are otherwise invalid.

17. The working and living conditions on the ship do not conform to the requirements of MLC 2006.

18. There are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with MLC 2006.'.

(17) In point 3.10. of Annex X, the following points 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 2006 (including seafarer's rights).'

(17a) In point 1 of Annex XII, the following indent is added:

'– submit to the Director-General of the International Labour Office, on behalf of the Member States, statistics and information regarding complaints that have been resolved.'

Article 2

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 reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

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

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
