



Brussels, 9 June 2016

9687/16

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**Interinstitutional File:  
2016/0124 (NLE)**

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**SOC 369  
EMPL 256  
PECHE 194  
IA 34**

## **REPORT**

from:	The Presidency
to:	Permanent Representatives Committee (Part I) / Council (EPSCO)
No. Cion prop.:	8535/16 SOC 214 EMPL 131 PECHE 150 - COM(2016) 235 final + ADD 1 + ADD 2 + ADD 3
Subject:	Proposal for a COUNCIL DIRECTIVE implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012 as amended on 8 May 2013 concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation - Progress report

## **I. INTRODUCTION**

On 29 April 2016, acting in accordance with Article 155(2) TFEU, the Commission submitted a proposal to the Council with the aim of implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012 as amended on 8 May 2013 concerning the implementation of the Work in Fishing Convention 2007 of the International Labour Organisation.

According to the above Treaty provision, the proposal is not subject to a legislative procedure and the European Parliament was duly informed.

The ILO Work in Fishing Convention C188 was adopted by the International Labour Conference (ILC) at its 96th session on 14 June 2007. This ILO Convention as such will only enter into force twelve months after ratification by ten Member States of the ILO. To date, from amongst the EU Member States only two ratified the Convention (FR in October 2015 and EE in May 2016). LT informed that it is finalising its ratification process, some other Member States indicated that they are positively inclined to do so.

This sectorial EU-level social partner agreement aims at enhancing the working and living conditions for fishermen working on vessels flying the flag of an EU Member State. Its specific objectives are to improve occupational health and safety for fishermen within the EU, and to establish a consolidated legal framework suited to working conditions in the sea fishing sector. It should also be noted that the proposed Council Directive contains a clause allowing Member States to maintain more favourable provisions than those contained in the agreement.

The legal basis allows the Council to either adopt the draft Directive proposed by the Commission with a view to implementing the social partner agreement or to refuse its adoption. The agreement as such cannot be amended by the Council, excluding thereby any change for example on the scope. Furthermore, as the Union-level social partners decided to avail themselves of Article 155(2) TFEU, neither the Commission nor the Council are entitled to suggest to them to implement the agreement autonomously.

The Directive is addressed to all Member States and the agreement does not contain any exemption from the obligation to transpose provisions thereof. However, if, for reasons of geography, such transposition is pointless, the Court of Justice has accepted that a Member State is not under such an obligation. The Member State concerned should inform the Commission of the reasons that justify its non-transposition. As guardian of the Treaties, the Commission then reviews the reasons on a case-by-case basis.

In a letter dated of 30 May 2016, addressed to the attachés of the Working Party, the ETF and Europêche called upon the Member States to speed up the work in view to agree on their agreement on the ILO Work in Fishing Convention (C188) at the next EPSCO Council meeting, to be held on 16 June, underlining that their agreement aims at implementing C188 into EU legislation and that the Convention has been adopted also thanks to the vote of all EU Member States, back in 2007, with the purpose of giving fishermen decent working and living conditions on board fishing vessels.

## **II. DISCUSSIONS in the Council preparatory bodies**

The Working Party on Social Questions (SQWP) started its work on 11 May with the presentation by the Commission of the proposal and the Impact Assessment (IA). Three rounds of discussions were devoted to the proposal, including an extensive review of the Commissions' IA (see doc. 9040/16 REV 1). A large number of issues were further clarified by the Commission. The Working Party agreed to clarify the scope by adding a reference to the "sea fishing sector". Self-employed working on the same vessel alongside employees fall under certain conditions within the scope of the agreement in the context of occupational safety and health conditions.

Some important remaining issues were also solved, such as the specific situation of land-locked EU Member States. This was catered for in an additional recital which reflects the standing case law of the European Court of Justice. The Commission also referred to the precedent set in the light of the Council discussions on Council Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels which some of the land-locked EU Member States due to the particular situation of those Member States did not transpose and infringement proceedings were not launched.

As to the question whether certain provisions of the social partner agreement concern areas other than health and safety and the working environment, the Commission informed the Working Party that the social partners concerned had clearly indicated their intention not to include any provisions impacting on social security.

Furthermore, an additional provision was inserted with the aim to provide transparency and legal certainty as to the entry into force of the Council Directive once adopted, by stipulating that the date be published by the Commission in the Official Journal of the European Union. The Commission furthermore underlined that the agreement offers the possibility of progressive implementation of the proposal, within a period of five years.

In the Working Party on Social Questions on 2 June the Council Legal Service responded to a question relating to the applicable voting procedure. The Presidency has concluded that the Council needs to discuss this matter before proceeding to adoption of the proposal.

### **Reservations**

Following the last Working Party meeting on 2 June, the following reservations remain:

(a) ***Scrutiny reservations***

BG, CZ, EE, HR, LU, HU, MT, PL, PT, SI, FI and UK maintained their scrutiny reservations.

(b) ***Parliamentary reservations***

DK and UK maintained their parliamentary reservations.

(c) ***Linguistic reservations***

DK and HU have a linguistic reservation, SE on Article 11(5) of Addendum 2.

## **IV. CONCLUSION**

On the basis of the work undertaken by the Netherlands Presidency and a preliminary exchange on the legal basis, it can be expected that more in-depth discussions on this issue will allow the next Presidency to move forward with a view to reaching a political agreement at the next Council (EPSCO) meeting in October.

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