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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention

Delegations will find attached document COM(2014) 161 final.

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2014/0088 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal aims at establishing the Union position on amendments to the Code of the Maritime Labour Convention, 2006 regarding the liability of shipowners with respect to a) compensation for claims for death and personal injury and b) abandonment of seafarers.

Amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006) of the International Labour Organisation (ILO), hereinafter ‘the Maritime Labour Convention’, ‘the Convention’ or ‘the MLC’ are on the agenda of the first meeting of the “Special Tripartite Committee”, hereinafter ‘the Committee’.

The MLC establishes minimum working and living standards for all seafarers working on ships flying the flags of ratifying countries¹. The amendments to be considered by the Committee concern the Code of the MLC, which relates to the way the MLC Articles and Regulations are implemented and which contains both standards and guidelines².

1.1. Consideration and possible adoption of amendments to the Code of the Maritime Labour Convention at the first meeting of the "Special Tripartite Committee" on 7-11 April 2014

The Committee is entrusted to consider proposals of amendments to the Code of the MLC in accordance with Article XV of the MLC. The ILO Governing Body established the Committee at its 318th Session in June 2013. At its 319th Session in October 2013, it further decided to convene the first meeting of the Committee in Geneva from 7 to 11 April 2014 and adopted its agenda, which includes the “consideration of proposals for amendments to the Code of the Maritime Labour Convention, 2006 (MLC, 2006)”.

Two matters for future amendments to the Code had been identified at the joint ILO/IMO³ Ad Hoc Expert Working Group on Liability and Compensation held in 2009⁴ as a follow-up to a resolution adopted by the 94th (Maritime) Session of the International Labour Conference when it adopted the MLC⁵: the liability of

¹ <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>.

² The MLC is organized into three main parts: the Articles, coming first, set out the broad principles and obligations. The Articles are followed by the Regulations and the Code, which relate to the areas of seafarers’ working and living conditions covered by the Convention and to inspection and compliance. The Regulations, which are written in very general terms, are complemented by the more detailed Code. The Code has two parts: Part A contains Standards and Part B Guidelines. Countries that ratify the MLC must adopt national laws or take other measures to ensure that the principles and rights set out in the Regulations are implemented in the manner set out by the Standards in Part A of the Code (or in a substantially equivalent manner). When deciding on the details of their laws or other implementing measures, the ratifying countries must give due consideration to following the Guidelines set out in Part B of the Code.

³ International Maritime Organisation.

⁴ ILO–IMO–WGPS/9/2009/10, *Final report*, Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, Ninth Session.

⁵ Resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, International Labour Conference, *Provisional Record* No. 3-1(Rev.), 94th Session (Maritime), Geneva,

shipowners with respect to compensation for claims for death, personal injury and to abandonment of seafarers. These two matters were further identified by the Preparatory Committee established in 2010 by the Governing Body of the ILO as urgent matters for consideration at the first meeting of the Committee.

Two sets of Proposals for amendments to the Code of the MLC in this respect were jointly submitted by the group of shipowners and the group of seafarers at the Committee in October 2013, in accordance with paragraph 2 of Article XV of the MLC⁶.

Under the simplified procedure for amending the Code of the MLC provided for as per paragraph 3 of Article XV of the MLC, the Director General of the ILO communicated the proposal for amendments to all ILO Member States with an invitation to transmit their observations and suggestions in October 2013⁷. The proposals for amendments were further made available to the European Union in December 2013⁸.

The Committee meeting in April 2014 is to consider these two sets of proposals for amendments. The adoption of these amendments by the Committee will require that half of the Members having ratified the MLC are represented in the meeting and a majority of two-thirds of the Committee members, comprising the votes of half of each of the government, shipowners and seafarers voting powers.

1.2. Possible approval of amendments to the Code of the Maritime Labour Convention at the 103rd session of the International Labour Conference on 28 May-12 June 2014 and entry into force

Once adopted by the Committee, amendments to the Code of the MLC are to be approved by the International Labour Conference with a two-thirds of the votes cast by delegates present and are submitted for consideration to the ILO members that have ratified the MLC. It is expected that the 103rd session of the International Labour Conference, to be held on 28 May-12 June 2014, will be entrusted with that task.

Amendments approved under this procedure enter into force within a period which is normally two years, unless a substantial proportion of ratifying members⁹ have formally expressed their disagreement with these amendments.

2006, p. 3-1/16. See: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_088130/lang--en/index.htm.

⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_229695.pdf, see the Annex to the recommended Decision.

⁷ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_229694.pdf.

⁸ The invitation to attend the Committee included a reference to the webpage http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_228789/lang--en/index.htm which was updated in November 2013.

⁹ 40% of the Members having ratified the MLC and which represent 40% of the gross tonnage of the ships of the Members having ratified the MLC.

1.3. Content of the proposed amendments to the Code of the Maritime Labour Convention subject to 2014 meetings of the International Labour Organisation

The two sets of Proposals for amendments to the Code of the MLC subject to ILO 2014 meetings concern Standards (part A) and Guidelines (part B) of the Code of the MLC relating to Regulation 2.5 on Repatriation in title 2 on conditions of employment and to Regulation 4.2 on Shipowners' liability in Title 4 on health protection, medical care, welfare and social security protection¹⁰.

The proposal under Regulation 2.5 "Repatriation" (see Annex) deals with the abandonment of seafarers. Abandonment occurs when the shipowner fails to cover the cost of the seafarer's repatriation or has left the seafarer without the necessary maintenance and support or has otherwise unilaterally severed his ties with the seafarer including failure to pay contractual wages for a period of at least two months. The proposed amendments establish requirements to a rapid and effective financial security system to assist seafarers employed or engaged or working in any capacity on a ship flying the flag of the Member in the event of abandonment. This system shall cover outstanding wages and other entitlements up to four months, the cost of repatriation, necessary maintenance including adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment. Under the proposal, each Member shall further require that ships that fly its flag provide documentary evidence of financial security issued by the financial security provider. The proposed guidelines deal with immediate assistance in case time is needed to check the validity of certain aspects of the seafarer's request and with details of the evidence of financial security.

The proposal under 4.2 "Shipowners' liability" (see Annex) deals with compensation in the event of death or long-term disability due to an occupational injury, illness or hazard. It establishes minimum requirements for the financial security system providing such compensation as regards contractual claims, defined as claims which relate to sickness, injury or death occurring while the seafarer is serving under a seafarers' employment agreement or arising from employment under such an agreement. Effective arrangements are to be in place to receive, deal with and impartially settle contractual claims relating to compensation through rapid and fair procedures. There shall be no delay, no pressure to accept payment falling short of the contractual amount and interim payment in cases in which the final compensation is difficult to assess. Furthermore, there shall be no prejudice to other legal rights; however, benefits shall be offset against damages. Under the proposal, each Member shall further require that ships that fly its flag provide documentary evidence of financial security or that the shipowner notifies the flagstate and the seafarers if the security is cancelled. The proposed guidelines deal with details of the evidence of financial security and contain model receipt and release forms for the payment of contractual claims.

1.4. Union law in the field of the amendments to the Code of the Maritime Labour Convention subject to 2014 meetings of the International Labour Organisation

The proposed amendments to the Code of the MLC are to a large extent covered by competences conferred upon the Union by the Treaties. In addition, many parts of the

¹⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_229695.pdf.

amendments address areas of Union law in which the degree of regulation on the level of the EU has already reached an advanced stage. Moreover, Council Decision 2007/431/EC of 7 June 2007 authorised Member States to ratify the MLC in the interests of the Union.

The proposed amendments to the MLC focus on issues dealt with in 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 and amending Directive 1999/63/EC. This Directive incorporates relevant provisions of the MLC into EU law by setting minimum requirements in the relevant fields on the basis of an agreement between European social partners of the sector pursuant to the provisions of the Treaty in the social policy area¹¹.

While not dealt with as such under Directive 2009/13/EC, the “abandonment” of seafarers falls however under its Standard A 2.5 providing that “Each Member State shall ensure that the seafarers in ships that fly its flag are entitled to repatriation (...) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances”. Similarly, as regards shipowners' liability, Standard A 4.2 provides that “Each Member State shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards: (...) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement”. In both cases, the amendments to the MLC would introduce specific requirements for financial security systems and for the production of documentary evidence in these fields.

It has also to be noted that the final provisions of the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, implemented by Directive 2009/13/EC, state that subsequent to any amendments to any of the provisions of the MLC and if requested by either one of the Parties to the Agreement, a review of the application of this Agreement shall be carried out.

The enforcement of the proposed amendments to the MLC involves the transport area¹²: the “Port State Control” Directive 2009/16/EC, as amended by Directive 2013/38/EU of 12 August 2013 to include the MLC among the Conventions such as SOLAS¹³, MARPOL¹⁴ and the STCW¹⁵, as well as the “Flag State” Directive 2013/54/EU of 20 November 2013 enforcing the Annex to Directive 2009/13/EC. Directive 2009/16/EC applies to all ships calling at EU ports, regardless of the nationality of seafarers, and Directive 2013/54/EU aims to ensure that EU Member States fulfil their responsibilities as flag States with regard to Directive 2009/13/EC as well as its Annex and applies to all seafarers on EU flagged ships. The provision

¹¹ Art.153 and 155 TFEU.

¹² Art.100 TFEU.

¹³ International Convention for the Safety of Life at Sea.

¹⁴ International Convention for the Prevention of Pollution from Ships.

¹⁵ International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

of documentary evidence included in the proposals for amendments is in particular covered by Directive 2009/16/EC as amended.

The proposed amendments further involve aspects of the social policy area¹⁶, where minimum requirements are set in particular on occupational health and safety by Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

Moreover, the envisaged amendments concern the coordination of social security dealt with in Regulation (EC) No 883/2004 and Implementing Regulation (EC) No 987/2009 as far as EU nationals are concerned, Regulation (EU) No 1231/2010¹⁷ as far as third-country nationals legally resident in the EU, their family members and their survivors are concerned in a cross-border situation. These regulations were adopted in the areas of free movement of workers and immigration¹⁸.

The proposed amendments may involve EU legislation in the areas of judicial cooperation in civil matters, in particular Regulation (EU) No 1215/2012 on jurisdiction as well as the recognition and enforcement of judgments in civil and commercial matters¹⁹.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

The 103rd session of the International Labour Conference is likely to be entrusted to approve the said proposals for amendments to the Code of the Maritime Labour Convention. In accordance with Article XV of the MLC, such amendments enter into force for all Parties not formally expressing their dissent within a period of two years²⁰, six months after the end of that period, unless more than 40% of the Parties which, at the same time, represent not less than 40% of the Parties' gross tonnage have expressed disagreement with the amendments approved at the International Labour Conference.

It follows that the envisaged amendments to the Code of the Maritime Labour Convention will constitute an act of a body set up by an international agreement which will produce legal effects.

Only States are members of the ILO and can vote on the approval of the amendments to the Code of the MLC at the International Labour Conference, to which the Union is invited with an observer status.

¹⁶ Art.153 and 155 TFEU.

¹⁷ Or Regulation (EC) No 859/2003 in the cases of Denmark or the United Kingdom.

¹⁸ Article 48 TFEU, 79.2b TFEU.

¹⁹ Article 67(4) and points (a), (c) and (e) of Article 81(2) TFEU.

²⁰ Or another period set by the Conference, after they have been notified by the ILO DG to Members having ratified the Convention

Given the above, in accordance with Article 218(9) TFEU, it is necessary that the Council adopts a decision to establish the position to be adopted on the Union's behalf, authorising at the same time Member States to act jointly in the interest of the Union.

It is proposed to support the approval of the envisaged amendments to the Code of the MLC.

Indeed, based, at this stage, on the proposal jointly submitted by the group of ship-owners and the group of seafarers at the Committee, it appears that there is no contradiction between the general principles pursued by the proposed amendments and Union law, and there is no incompatibility between the proposed amendments and the Union *acquis*. In particular, there is no inconsistency of approach between the proposed amendments to the Code of the MLC and the minimum requirements under the Union *acquis* in the social area. This means that Union measures can be more stringent than the ILO standards and vice versa²¹, as it follows from Article 19(8) of the ILO Constitution that ILO Conventions such as the MLC contain minimum standards. Neither is there inconsistency between the proposed amendments to the Code of the MLC and Union *acquis* concerning the coordination of social security or the regulations under the Union *acquis* in the transport area.

Based on past experience, it can be expected that the text of the envisaged amendments to the Code of the MLC will not change substantially between the draft agreed by the group of ship-owners and the group of seafarers and its approval by the International Labour Conference. Nevertheless, in order to allow Member States to act within the bodies of the ILO jointly in the interest of the Union in an effective and efficient way, it is necessary to provide that Member States may agree to a text of the amendments to the Code with non-essential changes as compared to the text agreed between the group of ship-owners and the group of seafarers.

²¹ Opinion 2/91 of the ECJ, para. 18.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and, in particular, Articles 153 and 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Maritime Labour Convention, 2006, of the International Labour Organisation (ILO), hereinafter ‘the Convention’, establishes minimum working and living standards for all seafarers working on ships flying the flags of ratifying countries.
- (2) Proposals for amendments to the Code of the Convention are on the agenda of the first meeting of the “Special Tripartite Committee” established under the Convention, hereinafter ‘the Committee’, taking place on 7-11 April 2014 for consideration and, possibly, adoption. Adopted amendments are to be submitted for approval to the 103rd session of the International Labour Conference on 28 May - 12 June 2014.
- (3) The proposals for amendments concern the liability of shipowners with respect to compensation for claims due to death, personal injury and abandonment of seafarers. They were jointly submitted by the group of shipowners and the group of seafarers at the Committee in October 2013, in accordance with paragraph 2 of Article XV of the Convention (hereinafter “draft amendments”).
- (4) The rules under the Convention and the draft amendments are covered to a large extent by competences conferred upon the Union by the Treaties. In addition, the draft amendments will affect existing *acquis* in the areas of social policy¹, transport and coordination of social security². In particular, most of the provisions of the Convention have been the subject of 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. The implementation of the Convention in the Union is further ensured by Directive 2009/16/EC of 23 April 2009 on “Port State

¹ Including the health and safety framework Directive 89/391/EEC.

² Including Regulation (EC) No 883/2004 and Implementing Regulation (EC) No 987/2009 for EU nationals, Regulation (EU) No 1231/2010 or Regulation (EC) No 859/2003 for third-country nationals legally resident in the EU and in a cross-border situation and their family members and survivors.

Control”, as amended by Directive 2013/38/EU of 12 August 2013 and the "Flag State Directive" 2013/54/EU of 20 November 2013 enforcing the Annex of Directive 2009/13/EC of 16 February 2009.

- (5) In accordance with Article XV of the Convention, the amendments to the Code approved by the International Labour Conference will enter into force for all Parties not formally expressing their dissent within a period that is normally two years, six months after the end of that period, unless more than 40% of the Parties which, at the same time, represent not less than 40% of the Parties' gross tonnage have expressed disagreement with these amendments. It follows that the envisaged amendments to the Code of the Maritime Labour Convention will constitute an act of a body set up by an international agreement which will produce legal effects.
- (6) Given the above, in accordance with Article 218(9) TFEU, it is necessary that the Council adopts a decision to establish the position to be adopted on the Union's behalf, authorising at the same time Member States to act jointly in the interest of the Union, which is not a member of the ILO³.
- (7) Given that, at this stage, the draft amendments have not yet received the agreement of all stakeholders and that certain changes may still be made to it before their approval by the International Labour Conference, it is necessary to provide that Member States, acting jointly in the interest of the Union, may agree to a text of the amendments with non-essential changes as compared to the text agreed between the group of ship-owners and the group of seafarers.

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 103rd session of the International Labour Conference shall be to support the approval of the envisaged amendments to the Code of the Convention, such as currently jointly submitted by the group of shipowners and the group of seafarers at the Committee (referred to as the "draft amendments"). The text of the draft amendments is attached to this decision.
2. The position of the Union as set out in paragraph 1 shall be taken by the Member States, acting jointly in the interest of the Union when approving the amendments to the Code of the Convention at the 103rd session of the International Labour Conference.
3. Non substantial changes to this position may be agreed to within the bodies of the ILO by the Member States acting jointly in the interest of the Union, without further decision of the Council.

Article 2

This Decision is addressed to the Member States.

³ Opinion 2/91 of the European Court of Justice of 19 March 1993, ECR 1993-I, page 1061, para. 26.

Done at Brussels,

*For the Council
The President*