



**COUNCIL OF
THE EUROPEAN UNION**

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Subject: Recommendation from the Commission to the Council for a Council Decision on the negotiation of the provisions of the draft Maritime Labour Standards Convention in the context of the International Labour Organisation (ILO)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on 14 May 2014

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THE EUROPEAN UNION**

Brussels, 15 March 2005

7309/05

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**MAR 39
SOC 123**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director

date of receipt: 10 March 2005

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council for a Council Decision
on the negotiation of the provisions of the draft Maritime Labour Standards
Convention in the context of the International Labour Organisation (ILO)

Delegations will find attached Commission document SEC(2005) 324 final.

Encl.: doc. SEC(2005) 324 final



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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.03.2005

SEC(2005)324 final

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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

for a Council Decision on the negotiation of the provisions of the draft Maritime Labour Standards Convention in the context of the International Labour Organisation (ILO)

{SEC(2005)337}

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A. EXPLANATORY MEMORANDUM

The draft Maritime Labour Convention of ILO establishes maritime labour standards encompassing minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering and health protection, medical care, welfare and social protection.

The text spells out the rights of seafarers regardless of the flag of the vessel on which they serve and sets out obligations incumbent respectively on shipowners, flag states, port states and labour supplying states.

1. Background

Maritime labour standards have been considered important since 1920 when Conventions 7 on minimal age, 8 on unemployment indemnity and 9 on placing of seamen were adopted by the International Labour Conference. Since then, numerous instruments have been adopted by the ILO, namely 30 maritime conventions and about 30 recommendations.

The International Labour Office has launched a major consolidation of the existing body of the maritime labour instruments into a single instrument in line with recommendations made by the ILO Joint Maritime Commission in January 2001 in virtue of an agreement, the Geneva Agreement and approved by the ILO Governing Body at its 280th Session in March 2001.

The objective of the consolidation is to bring the system of protection contained in existing standards closer to the workers concerned, in a form that is consistent with this rapidly developing, globalized sector and to improve the applicability of the system. The aim of the consolidation is to improve consistency and clarity, adaptability and general applicability.

The Governing Body of the International Labour Organisation also decided at the above session to convene a Maritime Session of the International Labour Conference in 2005 with a view to adopt the new instrument. To assist with the work of developing such an instrument, it established the High-Level Tripartite Working Group on Maritime Labour Standards which met in 2001, 2002 and 2003. A preparatory technical maritime conference was held from 13 to 24 September 2004 and adopted a draft Convention with a number of pending issues to be negotiated later on before the final adoption of the Convention due to take place early 2006 at the latest.

The objective is to use this consolidated convention as a key updated tool to achieve a level playing field in the interest of all the parties and to remedy the low rate of ratification of many ILO Conventions in the field of maritime labour. This issue is of great importance to the European Union maritime and shipping industry, which operates a substantial number of the world's fleet and employs an important number of workers. There is a substantial community legislative acquis on a wide range of areas covered by the Convention. In certain of these areas, the European Community enjoys exclusive competence and in others concurrent competence with the Member States.

The European Commission has supported the work of the International Labour Organisation on maritime labour standards from the outset and has been contributing to the co-ordination of the positions of European Union Member States. After this stage of informal coordination, the

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process has to move to more formal procedures with a view to finalising the negotiation and the adoption of the convention by the International maritime labour conference of the ILO.

The European Commission has also informed and consulted European social partners of the maritime sector in relation to ongoing EU work in the context of the ILO consolidation of maritime labour conventions taking into account the Treaty provisions on social dialogue and the ILO principle on tripartite consultations.

2. Community competence

The Community has notably built up an important body of law applicable to the maritime sector in the following areas:

- Minimum requirements for seafarers to work onboard a ship (age condition, medical examination, training and qualifications)
- Conditions of employment of seafarers (information on contracts, working time, leaves, insolvency of the employer..)
- Health protection, medical care, prevention of accidents, welfare
- Port state control
- Enforcement of provisions related to the hours of work of seafarers on board ships calling at Community ports
- The role of classification societies

The areas above mentioned are areas of shared competence between the Community and the Member states.

However, there are other matters contained in the draft Convention submitted to the Preparatory Technical Maritime Conference that fall under exclusive competence of the Community. The first of these are the provisions in the ILO text relating to social security; the second are provisions in the ILO text referring to jurisdiction over legal disputes.

As far as the first issue is concerned, the draft ILO text affects the area governed by Community competence in virtue of Council Regulation (EEC) 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community adopted pursuant to Article 42 of the Council Regulation (EEC) 1408/71 of 14 June 1971 has been amended several times and will be replaced by Regulation 883/2004. Its application has been extended to third-country nationals by Regulation 859/2003.

In order to regulate the relationship between the ILO text and the EC law acquis on the coordination of social security schemes, a savings clause was included in the text of the ILO convention during the Preparatory Technical Maritime Conference in Geneva (13-24 September 2004). The purpose of this clause is to safeguard the application of EC law on the coordination of social security schemes in case the ILO text leads to an outcome which differs from the EC rules on coordination of social security schemes. Notwithstanding, the

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Commission considers that it is necessary to ensure that the negotiations on the ILO text continue in full respect of the EC law on this matter.

Similarly, the Commission cannot see any justification for derogating from Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as between Member States.

In view of the Community competence in matters regulated by the draft Convention, it is essential that the interest of the Community should be safeguarded. The articles dealing with jurisdiction, recognition and enforcement of judgments need to be compatible, to the extent possible, with the Community legislation in this area.

In accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by Council regulation 44/2001 nor subject to its application. As a result, Denmark is free to decide on this matter. However, the duty of cooperation enshrined in Article 10 of the treaty establishing the European Community entails a need to consult on this matter with the other Member states in the Council.

Some other areas dealt by the draft Convention are not covered by Community legislation, such as accommodation requirements, the right of repatriation for the seafarers but are of common interest.

3. The participation clause:

During the plenary session of the Preparatory Technical Maritime Conference on 24 September 2004 in Geneva, the Commission declared its intention of reflecting further on the relevance of the participation of the Community in the Convention and on the possible elaboration of concrete proposals. Member States had been made aware of the interest of the Commission in such an initiative during several EU coordination meetings.

The Commission's status in the ILO does not permit it to express itself as a Member or as a contracting party to the Convention in the name of the Community, even on matters of exclusive Community competence. The increasing involvement of the Community in matters dealt with by the ILO, the parallel development of internal rules in a wide range of areas and the development of a coherent set of community rules and policies in the field of maritime transport including port state control and enforcement make it necessary to strengthen Community participation which would bring mutual benefit to both ILO and the Community.

In this regard, it should be noted that in the framework of these negotiations, account has to be taken of the provisions of the ILO Constitution and of the tripartite structure of the organisation. The current ILO Constitution does not allow the Community to become a contracting party to the Convention. However, a solution could be found in allowing the Community to participate in the implementation of the Convention. This could be achieved if the Community sought to acquire the rights and obligations mentioned in certain specific provisions of the ILO text in relation to the implementation.

The participation clause would not be a substitute for EU Member States rights and obligations under the ILO Constitution and related ILO provisions. It would not affect the position and rights of the organisations of employers and workers under the ILO Constitution and related ILO provisions.

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B. RECOMMENDATION

For these reasons, the Commission recommends that the Council

- authorises the European Community through the Member States to negotiate, within the limits of its competence, the provisions of the consolidated ILO Maritime Labour Standards Convention (hereinafter “the Convention”)
- appoints a special committee to assist the Commission in its task of formulating European Community positions
- the Commission and the Presidency will ensure a close cooperation with Member states during the entire negotiation process taking into account the negotiating directives
- decides that at the International Maritime Labour Conference and in its tripartite technical committees, the European Community positions are expressed by the Presidency or by a representative of the Commission, as agreed at the EU coordination taking into account the nature of the issues and the competences involved. The Presidency can request that the Community positions are also presented and supported by a representative of another Member state taking into account his/ her specific technical expertise.
- adopts the proposed negotiating directives

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ANNEX

Negotiating directives

The Commission and the Member States shall ensure that Community interests are safeguarded in the future Convention.

The Commission and the Member States will endeavour to ensure that the provisions of the Convention are consistent with the relevant Community legislation, in particular with the texts annexed to these negotiating directives.

Regarding the areas of Community competence, the Commission shall ensure the compatibility between the provisions of the Convention relating to:

- social security and any relevant Community legislation, notably Council Regulation (EEC) 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, and as extended by Regulation 859/2003 to third country nationals.
- onboard and onshore complaint procedures and any relevant Community legislation, in particular Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition of judgements in civil and commercial matters.

The Commission and the Member states will endeavour to ensure that the Convention contains appropriate provisions enabling the European Community to participate in the implementation of the Convention.

The Commission shall report to the Council on the outcome of the negotiations and where appropriate, on any problem that may arise during the negotiations.