



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 May 2014

Interinstitutional File:
2014/0088 (NLE)

**9710/14
ADD 1**

**SOC 353
MAR 88
TRANS 261**

ADDENDUM TO "A" ITEM NOTE

from: Permanent Representatives Committee (Part 1)

to: COUNCIL

No. Cion prop.: 7978/14 SOC 207 MAR 56 TRANS 166 + ADD 1

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 statements made by Cyprus, Germany, Greece, Latvia, Luxembourg, Malta, the Netherlands, joined by Hungary, Romania and the United Kingdom on the above subject to be entered in the minutes of the Council.

Statement by Cyprus

Cyprus, for the purpose of facilitating the establishment of the Union position at the 103rd session of the International Labour Conference on amendments to the Code of the 2006 Maritime Labour Convention which establishes minimum working and living standards for all seafarers working on ships entitled to fly the flag of a state party to the convention, does not oppose to the adoption of the:

- 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

This is without prejudice to Cyprus' reservation against making Article 218, paragraph 9 TFEU the procedural legal basis for this Council Decision.

Statement by the Federal Republic of Germany

The 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 (2006) quotes Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) as the procedural legal basis. The GER Federal Government has reservations against using this article as the legal basis for the decision.

In the opinion of the German Federal Government, Article 218 TFEU can in principle only be applied to international agreements concluded by the European Union itself. The European Union cannot be a party to the Convention of the International Labour Organisation (ILO) because it is not a member of the ILO.

Article 218, paragraph 1 TFEU states that "agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure." The wording "in accordance with the following procedure" refers to the subsequent paragraphs of Article 218 TFEU. The Federal Government recalls that the Federal Republic of Germany has filed an action against a Council decision that is based on Article 218, paragraph 9 TFEU, before the Court of Justice of the European Communities (case C-399/12).

Against this background, the Federal Government - without prejudice to its reservation against making Article 218, paragraph 9 TFEU the procedural legal basis for this Council decision and the opinion asserted by Germany in the said proceedings before the Court of Justice of the European Communities - agrees with the Council decision, thereby expressing its support of the amendments to the Code of the ILO Maritime Labour Convention (2006).

Statement by Greece

Greece endorses the content of the text of the Council Decision on the position to be adopted on behalf of the EU at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention as established at the negotiating stage at the Council; Greece will therefore support the EU positions in the ILO.

Nevertheless, while Greece is in favour of a pragmatic approach according to our duty of "loyal cooperation" as an EU Member State, we still maintain our reservation regarding Article 218(9) TFEU as the appropriate legal basis for the Council decision in question, establishing the position to be adopted on behalf of the European Union and the subsequent procedure for coordination between the EU Member States in the ILO.

In addition, Greece reiterates its position according to which it considers that the aforementioned procedure must not set a precedent for similar cases, where the competence for external representation of the EU Member States in the ILO or in other International Organisations has been or will become an issue.

Statement by Latvia

Latvia fully supports the amendments to the Code of the Maritime Labour Convention to be adopted at the 103rd session of the International Labour Conference and recognises the importance and effectiveness of informal coordination of the EU member states position to be followed. Nevertheless, Latvia still has serious concerns about legal basis and exigency of the given proposal for the Council Decision.

Latvia has serious doubts that Article 218 (9) TFEU is an appropriate legal basis for the Council Decision in the present case because Article 218 (9) only applies to situations, where the EU is a member to an international organisation or where an international legal instrument to be adopted will produce legal consequences on EU *acquis*.

The need for the proposed Decision is based on the assumption that amendments to the Code of the Maritime Labour Convention (MLC) fall within the Union's competence and concern matters on which the Union has adopted rules. However proposed Decision has failed to clearly and in detail identify by which amendments areas of EU *acquis* were going to be affected, since any extension of the scope of EU *acquis* would affect non exercised EU competence.

Having regard to the reasons mentioned above, and, that there are insufficient grounds supporting a need of the proposed, formal coordinated position, Latvia abstains from the voting of the adoption of this Council Decision.

Statement by Luxembourg

Whilst voting in favour of the 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, Luxembourg wishes to express its support for the statements made by Germany and the Netherlands in the same context.

Statement by Malta

Malta is an ardent supporter of the amendments to the Code of the Maritime Labour Convention proposed to be adopted at the 103rd session of the International Labour Conference and fully supports the early entry into force of these amendments. However, Malta is unable to support the adoption of this Council Decision.

Malta considers that the Decision does not provide clear evidence of Union competence. In the circumstances, it is not considered appropriate for an EU position to be adopted by means of a Council Decision.

The EU is not a party to the International Labour Organisation and on such grounds Article 218(9) TFEU is not considered to be the appropriate legal basis for the proposed Council Decision. For the above reasons Malta is voting against the adoption of this Decision.

Statement by the Netherlands,
joined by Hungary

In order to safeguard the interests of the European Union, the Netherlands votes in favour of the proposed Council Decision on the position to be adopted on behalf of the European Union at the International Labour Organisation during the 103rd session of the International Labour Conference on the adoption of amendments to the Code of the Maritime Labour Convention.

While the Netherlands is in favor of a pragmatic approach according to our duty of loyal cooperation and to safeguard the interests of the European Union, this vote in this specific case, cannot be interpreted as a relinquishment of our original position in the pending case C-399/12. Neither does this set a precedent for similar cases where the competence for external representation has become an issue.

It should therefore be made abundantly clear that the arrangements under this proposal are without prejudice to the division of competences between the European Union and its Member States and that this vote cannot be interpreted in any way as an acceptance of article 218(9) TFEU as an appropriate legal basis for these Council Decisions.

Statement by Romania

Given the importance of the topic and the necessary steps that need to be taken in order to safeguard the minimum working and living standards for seafarers, Romania supports the goal of the proposed Council Decision.

Nevertheless, the support for the Council's decision cannot be understood as an acceptance of the use of 218(9) TFEU as an appropriate legal basis for this decision.

Romania underlines that Article 218(9) TFEU represents the procedural basis for concluding an international agreement to which the EU is party. In the specific case of the International Labour Organisation the European Union has observer status and therefore Article 218(9) cannot be applied.

Statement by the United Kingdom

The United Kingdom fully supports the amendments to be made to the Maritime Labour Convention (MLC), 2006 which are detailed in the annex to this Council Decision. The United Kingdom voted in favour of them at the International Labour Organization's MLC Special Tripartite Committee (STC) in Geneva which took place between 7-11 April 2014.

The United Kingdom considers that, in the absence of any exclusive competence for the Union, there is no requirement for the Council Decision. Further, the Council Decision should not apply to those amendments which concern unexercised shared competence or Member State competence. Accordingly, the United Kingdom is unable to support it and is therefore voting against it.