



Council of the
European Union

Brussels, 28 November 2014

16148/14

**Interinstitutional File:
2013/0390 (COD)**

**SOC 832
EMPL 182
MAR 185
CODEC 2378**

REPORT

from : The Presidency
to : Council (EPSCO)

No. prev. doc.: 15752/14 SOC 801 EMPL 168 MAR 180 CODEC 2295 + COR 1

No. Cion prop. : 16472/13 SOC 960 MAR 180 CODEC 2641 - COM(2013) 798 final

Subject : Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2002/23/EC.
- General approach

I. INTRODUCTION

On 19 November 2013, the Commission submitted a proposal for a Directive aiming to enhance the rights of workers in the seafaring professions under EU labour law in order to give them the same rights as enjoyed by workers on shore. To this end, the proposal introduces amendments to five labour law directives¹ which currently either exempt seagoing workers and/or fishermen or allow Member States to exclude them without express justification from the scope of these Directives.

¹ Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer, Directive 2009/38/EC on the establishment of a European Works Council, Directive 2002/14/EC establishing a general framework for informing and consulting employees, Directive 98/59/EC on collective redundancies and Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings.

The proposal recognises an unconditional right to information and consultation of seagoing workers in these directives which previously allowed for exclusions and derogations from this right.

The proposal aims to remedy the current legal situation which gives rise to unequal treatment of the same category of workers by different Member States, according to whether they apply or not the exemptions and derogations allowed by the current legislation. Most Member States have made little or no use of the exclusions.

In addition to ensuring a level playing field in the maritime sector, the proposal aims at increasing the quality of maritime jobs in order to reverse the current decline in the numbers of young Europeans entering certain maritime professions and retain skilled workers in the profession.

In accordance with Article 154(2) TFEU, the Commission consulted the social partners at the European level on the possible direction of Union action in this field in the framework of a two stage consultation procedure in 2007 and 2009. In view of their differences in opinion as to how best protect the rights of seagoing workers while safeguarding the competitiveness of the EU maritime sectors, the social partners in the maritime sector did not wish to initiate a negotiating procedure.

The European Parliament has not yet delivered its Opinion in first reading. The Economic and Social Committee delivered its Opinion on 25 March 2014 and the Committee of the Regions on 2 April 2014.

II. OUTCOME OF THE DISCUSSIONS

Since its presentation to the Social Questions Working Party on 3 July, the proposal has been thoroughly discussed during five subsequent meetings.

DK , MT and UK entered parliamentary scrutiny reservations.

Impact Assessment

The Presidency organised an IA examination of the proposal on the basis of an indicative checklist². The impact assessment clearly demonstrated the different legal situations in the Member States concerning the rights for seagoing workers. The experiences in the Member States who already included seagoing workers in the five Directives showed that these Member States did not experience any additional costs. The impact assessment also demonstrated the methodological limits concerning data in the maritime sector. Data on seafarers are not systematically gathered at national level and there is no uniform methodology to establish the numbers of seafarers in employment.

Content and legal basis

While most delegations were in favour of the objectives of the proposal, a large number of them stressed that its key provisions, notably Article 4 (regarding the inclusion of seafarers in the collective redundancies directive) and Article 5 (concerning the application of the transfer of undertakings Directive to the crews of seagoing vessels), should be substantially improved to take due account of the particular features of the shipping sector such as its worldwide dimension and the risk of flagging out.

A number of other delegations expressed reservations on the proposal stating that it was not the right means to achieve the stated objectives. They recalled that with the Maritime Labour Convention 2006, the EU acquis in the maritime sector and collective agreements at national level, seafarers' working conditions had been significantly improved. In their views, the establishment of a horizontal legislative framework for seafarers, which would be similar to that for workers in land based companies, might negatively affect the seafaring professions through the de-flagging of ships towards third countries' registries.

² In accordance with the recommendations set out in the report on impact assessment endorsed by the Council (Competitiveness) on 29-30 May 2013 (doc. 8406/13), and the 2014 Annual Report on impact assessment within the Council (doc.10882/14), in particular the recommendation related to the systematic use of the checklist.

In addition, questions were raised on the use of Article 153(2)(b), in conjunction with Article 153(1)(b) and (e) TFEU, as legal basis for the amendments contained in Articles 4 and 5 on which the Council Legal Service delivered a written opinion (doc. 13299/14).

Social Partner involvement

The Presidency informed delegations of the contents of a compromise joint position which the EU Social Partners at European level reached in September. Most delegations welcomed the joint position. CION stressed that, while the joint position, overall contributed to the same objectives than its proposal, it was based on a different approach as far as the balance of the provisions is concerned.

Given the complexity of the proposal and the need to take account of the operational constraints resulting from the particular nature of the shipping sector, the Presidency undertook to open a dialogue with the EU social partners with a view to achieving common ground.

III. THE PRESIDENCY'S COMPROMISE PROPOSAL

In the light of that dialogue, the Presidency submitted compromise proposals for the discussions on the open issues. It suggested a new balance in the outstanding provisions of the proposal.

At its meeting on 18 November, the Social Questions Working Party reached broad agreement on the text of the draft directive, as set out in doc. 15752/14, subject to a number of outstanding issues.

CION maintained its proposal.

All delegations maintained linguistic scrutiny reservations pending availability of the text in their own language versions.

On 26 November, the Permanent Representatives' Committee reached agreement on a revised compromise proposal including a new recital 8a, as set out in the Annex to this Report.

MT and UK did not support the proposal.

DE tabled a draft statement for the Council Minutes regarding the legal basis.

IV. CONCLUSION

The Permanent Representatives' Committee recommends the Council (EPSCO) meeting on 11 December:

- to reach a general approach on the text of the draft directive, as set out in Annex I to this Report;
- to decide to enter the German delegation's statement, as set out in the Addendum to this Report, in its Minutes.

Draft

DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

[...] amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC as regards seafarers

(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 153(2)(b) thereof, in conjunction with Article 153(1)(b) and (e),

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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

³ OJ C , , p. .

⁴ OJ C , , p. .

- (1) Under Article 153 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament and the Council may, in accordance with the ordinary legislative procedure, adopt, by means of directives, minimum requirements for gradual implementation aiming at improving working conditions, [...] and information and consultation of workers [...]. Such directives must avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized undertakings. Such directives must avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized undertakings.
- (2) Directive 2008/94/EC of the European Parliament and of the Council [...]⁵, Directive 2009/38/EC of the European Parliament and of the Council [...]⁶, Directive 2002/14/EC of the European Parliament and of the Council [...]⁷, Council Directive 98/59/EC [...]⁸ and Council Directive 2001/23/EC [...]⁹, either exclude certain seagoing workers from their scope or allow the Member States to exclude them.
- (3) Moved to recital 4.

⁵ Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

⁶ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

⁷ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

⁸ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16).

⁹ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

- (4) [...] ¹⁰ The existence and/or possibility of introducing exclusions may prevent or limit the possibility for seagoing workers to fully enjoy the right to information and consultation and the right to *fair and just* working conditions. [...]. Therefore, insofar those exclusions are not justified on objective grounds, they should be suppressed.
- (5) The present legal situation gives rise to unequal treatment of the same category of workers by different Member States, according to whether they apply or not the exemptions and exclusions allowed by legislation in force. An important number of the Member States have made limited use of the optional exclusions.
- (6) In its communication of 10 October 2007 [...] entitled “An Integrated Maritime Policy for the European Union” the Commission outlined that that policy is based on the clear recognition that all matters relating to Europe’s oceans and seas are interlinked, and that sea-related policies must develop in a joined-up way if they are to reap the desired results. It also stressed the need for an increase in the number and quality of maritime jobs for European citizens and the importance of improving working conditions on board.
- (7) Merged with recital 6.
- (8) In accordance with Article 154(2) TFEU, the Commission has consulted the social partners at the European level on the possible direction of Union action in this field.
- (8a) Considering the special nature of the maritime sector and the particular working conditions of the workers affected by the exclusions suppressed by this Directive, it is necessary to adapt some of the provisions of the amended Directives to reflect the specificities of the sector concerned.
- (9) Having regard to the technological developments of recent years, notably as regards communications technology, the information and consultation requirements should be updated and applied in the most appropriate manner, including remotely via electronic means of communication.

¹⁰ Moved to recital 14

- (10) The rights of seafarers covered by this Directive afforded by the Member States in the national legislation implementing Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and/or 2001/23/EC should not be affected. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (11) [...] deleted
- (12) Partly moved to recital 15.
- (13) Since the objective of this Directive, namely the improvement of working conditions of seafarers and their information and consultation, cannot be sufficiently achieved by the Member States but can rather, 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 that objective.
- (14) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to information and consultation within the undertaking and the right to fair and just working conditions. This Directive should be implemented in accordance with those rights and principles¹¹.
- (15) Directives 98/59/EC, 2001/23/EC, 2002/14/EC, 2008/94/EC and 2009/38/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹¹ Moved here from recital 4.

Article 1

Amendment to Directive 2008/94/EC

Article 1(3) of Directive 2008/94/EC is replaced by the following:

"3. Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of this Directive."

Article 2

Amendment to Directive 2009/38/EC

Directive 2009/38/EC is amended as follows:

- (1) In Article 1, paragraph 7 is deleted.
- (2) In Article 10(3), the following subparagraphs [...] are inserted after the second subparagraph:

"[...] A member of a special negotiating body or European Works Council or his alternate who is a member of the crew of a seagoing vessel shall be entitled to participate in a meeting of the special negotiating body or European Works Council or any other meeting within any procedures established under Article 6(3) [...] if he/she is not [...] at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting is taking place.

Meetings shall, wherever practicable, be scheduled to facilitate the participation of members, or alternates, who are members of the crews of seagoing vessels."

Article 3
Amendments to Directive 2002/14/EC

Article 3(3) of Directive 2002/14/EC is deleted.

Article 4
Amendments to Directive 98/59/EC

Directive 98/59/EC is amended as follows:

(1) [...] (deleted)

(a) [...] (deleted):

"(c) [...]" (deleted)

(1a) in Article 1(2) of Directive 98/59/EC point (c) is deleted.

(2) in Article 3(1), the following subparagraph is inserted after the second subparagraph:

"When the projected collective redundancy concerns members of the crew of a seagoing vessel, the employer shall notify the competent authority of the State of the flag which the vessel flies."

(3) "[...]" (deleted)

"1a. [...] (deleted):

(a) [...] (deleted),

(b) [...] (deleted)."

(4) [...] deleted.

Article 5
Amendments to Directive 2001/23/EC

(1) [...] (deleted)

(2) Article 1(3) of Directive 2001/23/EC is replaced by the following:

"3. This Directive shall apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business or part of an undertaking or business within the meaning of paragraphs 1 and 2, provided that the transferee is situated, or the transferred undertaking, business, or part of an undertaking or business remains, within the territorial scope of the Treaty.

This Directive shall not apply if the object of the transfer consists exclusively of one or more seagoing vessels."

(3) [...] (deleted)

"4. [...] (deleted):

(a) [...] (deleted),

(b) [...] (deleted).

Article 6

The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the general level of protection of persons covered by this Directive, already afforded by the Member States in the fields covered by Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and/or 2001/23/EC.

Article 7

The Commission, in consultation with the Member States and the social partners at Union level, shall submit a report to the European Parliament and to the Council on the implementation and application of Articles 4 and 5 by *¹².

Article 8¹³

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *¹⁴ The Member States shall immediately 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 a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. The 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.

¹² * [OJ: please insert the date - four years after the entry into force of this Directive].

¹³ See Section III (4) of the Report.

¹⁴ * [OJ: please insert the date - two years after the entry into force of this Directive].

Article 9

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 10

This Directive is addressed to the Member States.

Done at,

For the European Parliament
The President

For the Council
The President