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REPORT

From: Presidency
To: Permanent Representatives Committee / Council

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Subject: Proposal for a COUNCIL DIRECTIVE implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Council Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006 as approved by the International Labour Conference on 11 June 2014
- Political agreement

I. INTRODUCTION

In 2006, the International Labour Organisation (ILO) adopted the Maritime Labour Convention (MLC). This Convention was incorporated into EU law by Council Directive 2009/13/EC¹ implementing the Agreement on the MLC concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF).

¹ OJ L 124, 20.5.2009, p. 30. The Directive entered into force on 20 August 2013, the day of entry into force of the MLC. Member States were to transpose it into their national legislation by 20 August 2014.

The 2006 MLC only partially dealt with issues relating to liability and compensation in connection with crew claims for death, personal injury and abandonment in foreign ports. This issue is, however, to be fully addressed as many seafarers aboard ships are facing today abandonment without pay, often for several months, and without regular food supplies, medical care, or the means to return home.

In 2014, a Special Tripartite Committee, established under the MLC, adopted two amendments to the MLC aiming to protect further seafarers' rights in the event of abandonment. These amendments set out a mandatory financial security system applying when the shipowner fails to cover the cost of the repatriation, and set out minimum requirements for the financial security system to provide compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. These amendments were approved at the International Labour Conference in 2014.

In 2016, the ECSA the ETF concluded a new agreement amending their original Agreement (see above), in order to bring it in line with the 2014 amendments. This agreement reproduces the content of mandatory provisions of the 2014 amendments to the MLC. The Commission has consequently submitted the above proposal in order to align Directive 2009/13/EC with the 2014 amendments to the MLC and to ensure the effective enforcement of the amendments to the MLC through the application of the enforcement Directive on flag State responsibilities (Directive 2013/54/EU).²

II. STATE OF PLAY

The Presidency discussed the above proposal in the Social Question Working Party, where the representatives of the ECSA and the ETF presented their Agreement annexed to the draft Directive. In general, the delegations broadly supported the proposal and welcomed its objective to improve the working conditions of seafarers.

² Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006. (OJ L 329, 10.12.2013, p. 1–4)

Following to these discussions, the Presidency circulated a revised text with the following amendments: a reference added to the legal basis, adjusting Recitals 2 and 6 to make a correct reference to mandatory provisions, and Recital 13 to the Charter language, as well as lawyer-linguistic editorial amendments (adding standard Recital 15; amending the wording of Article 3 to put it inline with the Manual of Precedents; moving the Social Partners Agreement to the Annex of the legislative act; and amending headings 1 to 3 of the Agreement).

CZ, HU, PT and RO entered a general scrutiny reservation, SK and SI entering a positive scrutiny.

CZ, DE, HU, AT and SK have entered linguistic reservations.

III. CONCLUSION

The Committee of Permanent Representatives is requested to approve the text of the draft Directive set out in the Annex to this Report and forward it to the Council (EPSCO) on 7 December for political agreement.

COUNCIL DIRECTIVE (EU) 2017/...

of

implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2), in conjunction with Article 153(1) (a), (b) and (c), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Management and labour ('the social partners') may, in accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), jointly request that agreements they conclude at Union level be implemented by a Council decision, on a proposal from the Commission.

- (2) Council Directive 2009/13/EC³ implemented the agreement concluded on 19 May 2008 by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to incorporate the mandatory provisions of the Maritime Labour Convention, 2006, (MLC) of the International Labour Organisation (ILO) into Union law, in order to update the European legislation in force with those standards of the MLC which were more favourable for seafarers. It aimed at improving working conditions for seafarers, particularly as regards employment agreements, working hours, repatriation, careers and skill development, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures.
- (3) Following international expert meetings, the ILO launched a process to amend the Convention to address concerns relating to the abandonment of seafarers and financial security on the one hand, and to claims related to death or long-term disability of seafarers on the other. The Special Tripartite Committee established under the MLC adopted two amendments on these issues at its meeting from 7 to 11 April 2014. Parts of the rules under the amendments fell within the Union's competence and concerned matters on which the Union had adopted rules, in particular in social policy and transport. Therefore, on 26 May 2014 the Council adopted Decision 2014/346/EU⁴ on the position to be adopted on behalf of the Union at the 103rd session of the International Labour Conference (ILC). This position was to support the approval of the amendments to the MLC Code.

³ Council Directive 2009/13/EC of 16 February 2009 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 (OJ L 124, 20.5.2009, p. 30).

⁴ Council Decision 2014/346/EU of 26 May 2014 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 (OJ L 172, 12.6.2014, p. 28).

- (4) The amendments were approved by the ILC at its 103rd session in Geneva on 11 June 2014 and entered into force on 18 January 2017. They relate to providing an effective financial security system to protect seafarers' rights in the event of abandonment and to assure compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. They improve and optimise the existing system for protecting seafarers, including the obligation for ships to carry documentary evidence on board of the financial security system and to extend the system to cover two new situations of abandonment. These situations relate to cases in which seafarers have been left without the necessary maintenance and support or to cases in which the shipowner has unilaterally severed its ties with the seafarer, including failure to pay contractual wages for a period of at least two months.
- (5) On 5 December 2016, the social partners in the maritime transport sector – the ECSA and the ETF – concluded an agreement ("the social partners' agreement") to amend Directive 2009/13/EC in line with the amendments of 2014 to the MLC, 2006. On 12 December 2016, they requested that the Commission present a proposal for a Council Directive under Article 155(2) of the TFEU in order to implement that agreement.
- (6) The social partners' agreement reproduces the content of mandatory provisions of the 2014 amendments to the MLC. The first amendment, on the financial security system in the event of abandonment of the seafarer, relates both to health and safety and working conditions and is thus covered by Article 153(1)(a) and (b) of the TFEU. The second amendment, on the requirements of the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, is covered by Article 153(1)(c), on social security and social protection of workers. Therefore, the agreement relates to matters covered by Article 153 of the TFEU and can be implemented by a Council decision on a proposal from the Commission, according to Article 155(2). For the purposes of Article 288 of the Treaty, the appropriate instrument to implement the agreement is a directive.

- (7) In accordance with the Commission Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, the Commission has assessed the representative status of the signatory parties and the legality of each clause of the agreement.
- (8) The social partners' agreement of 5 December 2016 amends the agreement concluded on 19 May 2008 between ECSA and the ETF on the MLC, annexed to Council Directive 2009/13/EC, and incorporates into that Directive the 2014 ILO amendments to the MLC in order to improve the working conditions, health and safety and social protection for seafarers on board ships flying the flag of a Member State.
- (9) In amending Directive 2009/13/EC, the social partners' agreement of 5 December 2016 will bring the mandatory provisions of the 2014 ILO amendments to the MLC within the scope of enforcement Directive 2013/54/EU on flag State responsibilities, and of the Union law supervisory and monitoring system – and in particular of the Court of Justice of the European Union, in addition to the MLC supervisory system. This should make for greater compliance by Member States and shipowners.
- (10) Without prejudice to the provisions of the agreement on follow-up and review by the social partners at Union level, the European Commission will monitor the implementation of this Directive and of the social partners' agreement.
- (11) The Member States may entrust social partners with the implementation of this Directive, where the latter jointly request this and as long as the Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (12) Pursuant to Article 155(2) of the TFEU, the Commission has informed the European Parliament by sending it the text of its proposal for a Directive containing the social partners' agreement.
- (13) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, and in particular Article 31 thereof.

(14) Since the objectives of this Directive, namely to improve the working conditions, health and safety and social protection of workers in the maritime transport sector, which is a cross-border sector operating under the flags of different Member States, cannot be sufficiently achieved by the Member States but can rather 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 those objectives.

(15) Directive 2009/13/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements the agreement concluded between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on 5 December 2016 (social partners' agreement) by amending Council Directive 2009/13/EC in line with the amendments of 2014 to the MLC, 2006 as approved by the ILC on 11 June 2014.

Article 2

In line with the social partners' agreement to amend Council Directive 2009/13/EC in accordance with the amendments in 2014 to the Maritime Labour Convention, 2006 as approved by the ILC at its 103rd session, Geneva, 11 June 2014, the Annex to Council Directive 2009/13/EC is amended in accordance with the Annex to this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by two years after its entry into force. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

The Annex to Council Directive 2009/13/EC is amended as follows:

- (1) In the heading "Standard A2.5 – Repatriation", "A2.5" is replaced by "A2.5.1".
- (2) The following Standard A2.5.2 is inserted:

'Standard A2.5.2 - Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Agreement or the terms of the seafarers' employment agreement, the shipowner:
 - (a) fails to cover the cost of the seafarer's repatriation; or
 - (b) has left the seafarer without the necessary maintenance and support; or
 - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.
3. Each Member State shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organisations concerned.
4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member State.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.
6. Each Member State shall require that ships that fly its flag, and which are required under national laws to carry a Maritime Labour Certificate or do so at the request of the shipowner, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
7. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:
 - (a) name of the ship;
 - (b) port of registry of the ship;
 - (c) call sign of the ship;
 - (d) IMO number of the ship;
 - (e) name and address of the provider or providers of the financial security;
 - (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation from the financial security provider that the financial security meets the requirements of this Standard A2.5.2.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 of this Standard.
9. Having regard to Regulation 2.5, assistance provided by the financial security system shall be sufficient to cover the following:
 - (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
 - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10 of this Standard; and
 - (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.
 13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.
 14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard'.
- (3) [...] "Standard A4.2 Shipowners' liability" is **amended as follows**:
- a) "A4.2" is replaced by "A4.2.1";
 - b) **The following paragraphs are added**:
 - '8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:
 - (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;
 - (b) there shall be no pressure to accept a payment less than the contractual amount;

- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
 - (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
 - (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.
9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.
 10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.
 11. Each Member State shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
 12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.
14. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:
 - (a) name of the ship;
 - (b) port of registry of the ship;
 - (c) call sign of the ship;
 - (d) IMO number of the ship;
 - (e) name and address of the provider or providers of the financial security;
 - (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.'

(4) The following standard [...] is inserted:

'Standard A4.2.2 - Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to 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.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1 (b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organisations concerned.
3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.'
