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REPORT

from: General Secretariat of the Council
to: Permanent Representatives Committee (Part I)

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.
- Analysis of the final compromise text with a view to agreement

Delegations will find attached the final compromise text of the above proposal, with a view of reaching a first-reading agreement with the European Parliament.

The changes in relation to the Commission proposal are marked in *bold italics* and deletions by [...], while the changes following the trilogue on 6 May are marked in *bold italics underlined*.

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² 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 **disproportionate costs**, administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized undertakings **which are the drivers of sustainable growth and jobs**.
- (2) Directive 2008/94/EC of the European Parliament and of the Council³ [...], Directive 2009/38/EC of the European Parliament and of the Council⁴ [...], Directive 2002/14/EC of the European Parliament and of the Council⁵[...], Council Directive 98/59/EC⁶ [...]and Council Directive 2001/23/EC⁷ .[...], either exclude certain seagoing workers from their scope or allow the Member States to exclude them.
- 2a **The 2009 Commission communication on strategic goals and recommendations for the EU's maritime transport policy until 2018⁸ underlined the importance of establishing an integrated legal framework in order to make the sector more competitive.**
- (3) [...] ⁹

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

⁷ 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).

⁸ COM (2009) 008 final.

⁹ Moved to recital 4.

- (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. Insofar as the existence and/or possibility of introducing exclusions is not justified on objective grounds and seafarers are not treated equally, they should be suppressed.**
- (5) The present legal situation, **existing in part as a result of the specific nature of the seafaring profession,** 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 **optional exclusions** allowed by **legislation in force**. An important number of the Member States have made **no or limited** use of those 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, inter alia through investment in research, education, training, health and safety.**
- (7) [...] ¹¹
- (7a) **This Directive is also in line with the Europe 2020 Strategy and its employment objectives and with the strategy set out by the Commission in "an Agenda for new skills and jobs: a European contribution towards full employment."** ¹²
- (7b) **The "blue economy" represents a substantial share of the EU economy in terms of jobs and gross added value.**
- (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.

¹⁰ Moved to recital 14

¹¹ Merged with recital 6.

¹² COM (2010) 682 final/2

- (8a) *In the framework of their social dialogue, the social partners in the maritime sector have reached a common understanding which is of major importance for this Directive. That common understanding strikes a good balance between the need to improve seafarers' working conditions and the need to take proper account of the sector's specific features.*
- (8b) *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 the use of these new technologies for remote communication and by enhancing the availability of Internet and ensuring reasonable use on board, in order to improve the implementation of this Directive.*
- (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) [...]

[11a]

- (11b) *The ILO Maritime Convention of 2006 aims to achieve both decent working and living conditions for seafarers by providing for health and safety standards, fair terms of employment and professional training, and secure fair competition for ship owners through its global application as well as to guarantee an international level playing field with regard to some, but not all, employees' rights, regardless of nationality or vessel flag. The Convention and Directives 2009/13/EC, 2009/16/EC and 2013/54/EC set out seafarers' rights to decent conditions of work on a wide range of subjects, provide coherent rights and protection at work for seafarers and contribute to a level playing field also within the Union.*

- (11c) **The Union should always strive to improve working and living conditions onboard ships, and to exploit the potential for innovation in order to make the maritime sector more attractive to Union seafarers, including young workers.**
- (11d) [...] ¹³
- (12) [...] ¹⁴
- (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 principles** ¹⁵.
- (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:

¹³ Integrated in recital 9.

¹⁴ Partly moved to recital 15.

¹⁵ 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.

In cases where a member of a special negotiating body or a European Works Council or his or her alternate, who is a member of the crew of a vessel is unable to attend a meeting, the possibility of using, wherever possible, new information and communication technologies shall be considered."

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) [...]

(a) [...]

(b) [...]

(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) [...]

Article 5

Amendments to Directive 2001/23/EC

[...]

(1) [...]

(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) [...]

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** ^{*16}.

¹⁶ * [OJ: please insert the date - four years after the entry into force of this Directive].

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [...] **by** *¹⁷ 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.

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

¹⁷ * [OJ: please insert the date - two years after the entry into force of this Directive].