

European Community Shipowners' Associations (ECSA)/European Transport Workers' Federation (ETF) Agreement on the Maritime Labour Convention, 2006: flag State responsibilities for the enforcement of Directive 2009/13/EC

2012/0065(COD) - 23/03/2012 - Legislative proposal

PURPOSE: to establish provisions in order to ensure that Member States effectively discharge their obligations as flag States to monitor compliance of ships flying their flag with Directive 2009/13/EC.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND : on 23 February 2006, the International Labour Organisation adopted the **Maritime Labour Convention, (MLC)**, desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

The MLC, adopted in 2006, provides **comprehensive rights and protection at work for all seafarers** regardless of their nationality and the flag of the ship. It aims to both achieve decent working conditions for seafarers and secure fair competition for quality shipowners. It sets out seafarers' rights to decent conditions of work on a wide range of subjects, and has been designed to be globally applicable, easily understandable, updatable and uniformly enforced. Council Decision 2007/431/EC has authorised the Member States to ratify the Convention. Member States should ratify it as soon as possible.

Council Directive 2009/13/EC implements the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amends Directive 1999/63/EC.

Directive 2009/13/EC was adopted on the basis of Article 155 of the Treaty. Since agreements concluded by virtue of Article 155 of the Treaty to be implemented by Council decisions can only cover matters defined by Article 153 of the Treaty, certain provisions of the Convention relating to flag State responsibilities for the enforcement of the Convention could not be part of the social agreement implemented by Directive 2009/13/EC. Those provisions should be integrated into Union law by virtue of this Directive.

This proposal is closely associated with the [proposal for a directive](#) of the European Parliament and of the Council amending Directive 2009/16/EC on port State control.

IMPACT ASSESSMENT: a full public consultation offered an opportunity for Member States and stakeholders to express their views in June 2011. There was a general consensus on the need for updating the legislation related to flag State and port State in order to enforce the MLC requirements. The specific

positive effects which were underlined consisted of reinforcing maritime safety, improving quality shipping, making the conditions of competition fairer between EU and non EU operators and between EU and non EU flags. Stakeholders also mentioned the better job quality for all seafarers.

LEGAL BASIS: Article 100(2) TFEU.

CONTENT: the national flag constitutes the primary source of State responsibility for a ship.

Flag States are required to ensure that their ships comply with the standards accepted by flag States under international law and conventions, in particular with international minimum standards. Directive 2009/21/EC seeks to ensure that the flag of all EU Member States have good standing (not being blacklisted...) and to incorporate the International Maritime Organisation (IMO)'s flag State audit scheme into EU law and to introduce the quality certification of the national maritime authorities.

This proposal has different purposes. It does not refer to any IMO procedures but lays down principles to monitor the application of Directive 2009/13/EC taking up some of the Maritime Labour Convention standards. For the sake of clarity, it is preferable to have a separate text.

In concrete terms, the proposal:

- aims to ensure that the EU flag States **meet their responsibilities** in applying and enforcing Directive 2009/13/EC ;
- refers to the **definition of “ship” and “shipowner”** based on the MLC definition and used in Directive 2009/13 to avoid any discrepancy between the standards and the implementation measures ;
- lays down the obligation for flag State to establish **mechanisms for inspection** and to ensure the compliance of its ships with Directive 2009/13/EC ;
- refers to **professional qualifications and independence of staff** in charge of verification so that the matters covered by Directive 2009/13/EC are rightly applied on board vessels flying the flags of the Member States concerned;
- deals with the **complaints** on board EU flagged ships and lays down the principles and procedure to be followed by the flag States competent staff.

Further to [Joint Political Declarations](#), the Commission is now considering the need for explanatory documents on a case-by-case basis. By virtue of the principle of proportionality, explanatory documents have not been deemed justified in the present proposal since the proposal modifies only a limited number of legal obligations of an existing directive. Thus, the present proposal does not include the recital on explanatory documents.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.