

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) - 13/03/2013 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament **adopted amendments** to the proposal for a directive of the European Parliament and of the Council concerning flag State responsibilities for the enforcement of Council Directive 2009/13/EC 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.

The matter has been referred for reconsideration to the competent committee and the vote on the legislative resolution was put back to a later session.

The amendments adopted in plenary aim to **align the directive as accurately as possible with the relevant provisions of the Maritime Labour Convention 2006 MLC establishing rights for seafarers**. They amend the Commission proposal as follows:

Level of protection for workers: Parliament wanted to clarify that under no circumstances should the application and/or interpretation of the Directive lead to a **reduction in the level of protection currently enjoyed by workers under Union legislation**. It also stresses the Agreement concluded between the social partners annexed to Directive 2009/13/EC **should be mentioned** in this directive since it contains the substance of the MLC, which is being transposed into EU law.

Certificate and declaration of maritime labour compliance: the amendments aim to transpose Rule 5.1.1 of the MLC to ensure that each State implements its responsibilities with respect to ships that fly its flag. In this respect, each Member State shall establish an **effective system for the inspection and certification** of maritime labour conditions, ensuring that the working and living conditions for seafarers on ships flying its flag meet, and continue to meet, the standards in that Convention.

A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall **constitute prima facie evidence** that the ship has been duly inspected by the Member State whose flag it flies and that the requirements of Directive 2009/13/EC relating to working and living conditions of the seafarers have been met to the extent certified.

The interval between inspections **shall in no case exceed three years**.

Authorisation of recognised organisation (MLC Regulation, Rule 5.1.2): Members propose to include an express reference to the very specific provision of the MLC to ensure that recognised organizations and their staff carry out their monitoring tasks in the best possible way.

Any authorisations granted with respect to inspections shall, as a minimum, empower the recognised organisation to **require the deficiencies that it identifies in seafarers' working and living conditions to be rectified** and to carry out inspections in this regard at the request of a port State.

Each Member State shall provide the International Labour Office with **a current list of any recognised organisations** that are authorised to act on its behalf. The list shall specify the functions that the recognised organisations have been authorised to carry out.

Maritime labour certificate and declaration of maritime labour compliance (MLC Regulation, Rule 5.1.3.): Parliament proposes to introduce a provision requiring ships that fly the flag of a Member State flag to **carry and maintain** a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including the measures for ongoing compliance to be included in the declaration of maritime labour compliance, have been inspected and meet the requirements of national laws or regulations or other measures implementing Directive 2009/13/EC and the Social Partners Agreement annexed thereto.

Inspection and enforcement (MLC Regulation, Rule 5.1.4): the amendments state that each Member State must maintain a **system of regular inspections** of the conditions for seafarers on ships that fly its flag. A Member State shall appoint a sufficient number of **qualified inspectors** to fulfil it to this effect.

Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:

- to board a ship that flies the flag of a Member State;
- to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
- to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of Directive 2009/13/EC.

Inspectors shall be **prohibited from having any direct or indirect interest** in any operation that they are called upon to inspect. Inspectors shall submit a **report of each inspection** to the competent authority of the Member State, which shall maintain **records of inspections** of the conditions for seafarers on ships that fly its flag and shall publish an **annual report** on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

On-board complaint procedures (MLC Regulation, Rule 5.1.5.): Members suggest that it is necessary to incorporate more detailed provisions with regard to complaints. Member States should, for example:

- require that ships that fly its flag have on-board procedures for the **fair, effective and expeditious handling of seafarer complaints** alleging breaches of the requirements of Directive 2009/13/EC;
- prohibit and penalise any kind of **victimisation of a seafarer** for filing a complaint.

On board complaint procedures shall seek to resolve complaints **at the lowest level possible**. However, in all cases, seafarers shall have a right to complain directly to the master.

The seafarer shall have the **right to be accompanied or represented** during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. They shall receive a copy of the **on-board complaint procedures** applicable on the ship, in addition to a copy of their seafarers' employment agreement.

Labour-supplying responsibilities, (MLC Regulation, Rule 5.3): the proposed amendments aim to ensure that Member States implement their responsibilities regarding recruitment and placement and the social protection of their seafarers.