

# Seafarers

2013/0390(COD) - 18/11/2013 - Legislative proposal

**PURPOSE:** to amend several European Directives in order to improve the level of information and consultation of seagoing workers in all Directives.

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

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** the EU labour law directives are generally applicable to all sectors of activity and all categories of workers. Nevertheless, seafarers are excluded or can be excluded from the scope of six directives, without any express justification. The directives concerned are the following:

- [Directive 2008/94/EC](#) relating to the protection of employees in the event of the insolvency of their employer (hereafter referred to as ‘the Employer Insolvency Directive’);
- [Directive 2009/38/EC](#) on the establishment of European Works Council (hereafter referred to as the ‘European Works Council Directive’);
- Directive 2002/14/EC establishing a general framework for informing and consulting employees (hereafter referred to as the ‘Information and Consultation Directive’);
- [Directive 98/59/EC](#) on the approximation of the laws of the Member States relating to collective redundancies (hereafter referred to as the ‘Collective Redundancies Directive’);
- [Directive 2001/23/EC](#) relating to the safeguarding of employees’ rights in the event of transfers of undertakings (hereafter referred to as the ‘Transfer of Undertakings Directive’);
- [Directive 96/71/EC](#) concerning the posting of workers in the framework of the provision of services (hereafter referred to as the ‘Posting of Workers Directive’).

Depending on the situation at national level, exclusions could have a negative impact on a number of rights recognised under the Charter of Fundamental Rights of the European Union, in particular the **right to information and consultation within the undertaking** and the **right to fair and just working conditions**.

Most of the Member States have made little or no use of the exclusions which gives rise to a potential situation whereby the same categories of workers are treated differently in the different Member States.

The number of EU national seafarers is steadily decreasing and this could be problematic for the future, notably because experience off-shore is essential for certain shore-based jobs.

Although this could be the consequence of different factors, the lack of interest in maritime careers may be reinforced by the impression that seafarers are less well protected than other employees.

As a consequence, the aim of the proposal is to improve the level of protection of the rights protected under the EU Charter of Fundamental Rights in EU labour law and to ensure a level playing field at EU level.

**IMPACT ASSESSMENT:** according to the Directive to be amended, different options have been identified:

- suppression of the exclusions for the Insolvency Directive and for the European Works Council Directive;
- granting a derogation concerning the equivalent level of protection for the Information and Consultation Directive;
- including specific provisions for the Collective Redundancies Directive and for the Transfer of Undertakings Directive;

As regards the Posting of Workers Directive, it was decided that no changes should be made.

**LEGAL BASIS:** This proposal introduces amendments to five existing Directives: Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC. Three of these Directives were adopted with Article 153 TFEU (former Article 137 EC) as legal basis: 2009/38/EC, 2002/14/EC and 2008/94/EC. The legal bases of Directives 98/59/EC and 2001/23/EC were respectively Articles 100 EC and 94 EC, i.e., equivalent to the current Article 115 TFEU.

Despite the different legal bases of the Directives to be amended, having regard to their content, it is clear that they all serve to support and complement Member States' activities in the fields enumerated in Article 153(1) TFEU, in order to further the social policy objectives of the Union.

Article 153(2) TFEU is therefore the adequate legal basis for a single proposal amending the abovementioned five Directives.

**CONTENT:** this proposal introduces amendments to five Directives in force.

**The amending provisions may be summarised as follows:**

**Right to information and consultation:** the proposal recognises an unconditional right to information and consultation of seagoing workers in all Directives which previously allowed for exceptions and derogations from this right (European Works Councils Directive, Information and Consultation Directive, Collective Redundancies Directive, Transfer of Undertakings Directive).

**Principles:** the proposal also recognises other rights, taking into account the specificity of the sector (suppression in some specific cases of cooling-off periods in the Collective Redundancies Directive or of the transfer of the employment contract/relationship in the Transfer of Undertakings Directive).

**Amendments to the Directives:**

**a) reintroduction of seafarers into the scope of certain Directives:**

- the deletion of Article 1(3), point (b) of Directive 2008/94/EC. This will suppress the possibility of **excluding share-fishermen** from the scope of the Insolvency Directive;
- suppression of Article 1(7) of Directive 2009/38/EC. **Merchant navy crews will therefore be covered** by the provisions of the European Works Council Directive.

**b) new rights:** modifications to Article 3(3) of Directive 2002/14/EC in order to clarify that Member States are able to derogate from the general provisions of the Directive only where an **equivalent level of protection and effective exercise by the employees concerned is ensured**.

**c) collective redundancies:** Directive 98/59/EC is amended as follows:

- insertion of the definition of 'transfer', by reference to Directive 2001/23/EC;
- deletion of Article 1(2)(c), thus putting the **crews of seagoing vessels within the scope** of the Collective Redundancies Directive;

- clarification that the notification provided for by Article 3(1) of the Directive should always be made to the competent authority of the State of the flag. This clarification is necessary because of the potential coexistence of employment contracts under different national laws;
- insertion of a new provision stating that Member States may **grant the competent public authority the right to derogate, in part or in full, from the provisions on the ‘cooling-off’ period when the envisaged collective redundancy is carried out as a consequence of a transfer**, having as its object exclusively one vessel or more vessels, or when the employer only operates one vessel. If Member States would like to make use of this derogation, they have to consult social partners when transposing this provision into their legislation. This amendment takes into account the characteristics of the maritime sector.

It should be underlined that in the case of a sale consisting exclusively of one vessel or more, or in the case of an employer operating one vessel, the information and consultation obligation laid down in Article 2 continues to apply.

The Directive remains fully applicable in all other circumstances where the collective dismissal of members of the crew of a vessel is envisaged.

**d) transfer of undertakings:** current Article 1(3) of Directive 2001/23/EC is repealed. **The Directive is made fully applicable to seagoing vessels registered in and/or flying the flag of a Member State, wherever they are situated.** However, taking into account the specific characteristics of the maritime sector, Member States may, after consultation of social partners, derogate from the provisions of Chapter II of the Directive in the case of transfers concerning exclusively one seagoing vessel or a number of seagoing vessels, or the undertaking or business being transferred only operates one seagoing vessel. Consequently, in case of transfers concerning vessels exclusively or in the case of the undertaking only operating one vessel, at least the provisions of the Directive concerning information and consultation shall apply.

Vessels are fully covered by the scope of the Directive when they constitute one of the assets being transferred.

**Non-regression clause:** this clause aims at safeguarding the rights of workers covered by the scope of the proposal as recognised by the Member States before its entry into force.

**Review clause:** the objective of the review is to monitor the implementation and application of Articles 4 and 5 of the Directive in the Member States, in particular on two issues:

- the phenomenon of flagging out,
- the level of employment of EU seafarers.

**Transition period:** in order to take into account the differences between Member States regarding the nature of the maritime sector and the extent to which seafarers are included in the scope of national labour legislation, the proposal provides for a transition period of 5 years.