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Delegations will find attached document SWD(2016) 144 final.

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Brussels, 29.4.2016
SWD(2016) 144 final

COMMISSION STAFF WORKING DOCUMENT
IMPACT ASSESSMENT

on the Agreement concluded between the General Confederation of Agricultural Co-operatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012 as amended on 8 May 2013 concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation

Accompanying the document

the proposal for a Council Directive

implementing the Agreement concluded between the General Confederation of Agricultural Co-operatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012 as amended on 8 May 2013 concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation

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List of abbreviations

BMI	Body Mass Index
DCF	Data Collection Framework in the context of the Common Fisheries Policy
EU	European Union
EU LFS	European Labour Force Survey
EU OSHA	EU Occupational Safety and Health Agency
ESAW	European Statistics Accidents at Work
FTE	Full-Time Equivalents
GDP	Gross Domestic Product
ILO	International Labour Organisation
ILC	International Labour Conference
IMO	International Maritime Organisation
IUU	Illegal, Unreported and Unregulated fishing
NACE	Nomenclature Générale des Activités Economiques dans l'Union Européenne
OSH	Occupational Safety and Health
STCW-F	Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel
TFEU	Treaty on the Functioning of the European Union

Background

In accordance with Articles 152-155 of the Treaty on the Functioning of the European Union (TFEU), the European Union promotes the dialogue between the social partners at European level, including through consultations on EU social policy initiatives, and support to negotiations and joint actions of the social partners. According to Article 155(2) TFEU, agreements between the European social partners can either be implemented autonomously by the signatory parties and their affiliates in accordance with the procedures and practices specific to management and labour and the Member States, or if they concern matters covered by Article 153 TFEU, through EU legislation by means of a Council Decision¹ further to a proposal from the Commission. According to the Treaty, the EU social partners make the decision to negotiate an agreement on an autonomous basis.

In 2002, the International Labour Organisation (ILO)² started discussions and the preparation of complete and up-to-date international social standards for working conditions in the fishing sector, taking into account the technological progress in the sector. The ILO had already developed and adopted five Conventions relating to fishermen³. The last Convention had been adopted in 1966. The new standards would also address critical issues such as safety and health and take into account the existing differences in fishing operations, employment arrangements, methods of remuneration and other aspects⁴. The EU, its Member States, employers' representatives (in particular fishing vessel owners), and workers' representatives (in particular fishermen representatives) actively participated in the negotiations and conclusion of the Work in Fishing Convention, 2007 (also referred to as ILO Convention C 188), which was adopted at the 96th International Labour Conference (ILC) of the ILO in 2007⁵. All EU Member States voted in favour of the Convention. The objectives of this Convention are to ensure that fishermen have decent living and working on board fishing vessels with regard to working time, the details of their work agreement, accommodation and food, occupational safety and health protection, medical care and social security. It contains global minimum requirements. It will apply to all fishermen and fishing vessels engaged in commercial fishing operations. It consolidates the four out of five existing ILO Conventions relating to fishermen⁶.

¹ The implementation of a social partner agreement in EU law, normally takes the form of a Directive. See for example Directive 2009/13/EC, which implements the EU social partners' agreement on the ILO Maritime Labour Convention, 2006. The content of the ILO Maritime Labour Convention is similar to that of the ILO Fishing Convention. However, the first is applicable to seafarers and not to fishermen. Another example is Directive Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

² The International Labour Organisation is a specialised agency of the United Nations with a tripartite structure, www.ilo.org

³ C112 - Minimum Age (Fishermen) Convention, 1959 (No. 112), C113 - Medical Examination (Fishermen) Convention, 1959 (No. 113), C114 - Fishermen's Articles of Agreement Convention, 1959 (No. 114) C125 - Fishermen's Competency Certificates Convention, 1966 (No. 125), C126 - Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

⁴ ILO Report " Conditions of work in the fishing sector: The constituents' views" Report V(2) submitted to the International Labour Conference 2004.

<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-v-2.pdf>

⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

⁶ C112 - Minimum Age (Fishermen) Convention, 1959 (No. 112), C113 - Medical Examination (Fishermen) Convention, 1959 (No. 113), C114 - Fishermen's Articles of Agreement Convention, 1959 (No. 114), C126 - Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

The EU social partners in the sea fisheries sector ETF, Europêche and COGECA decided to enter into negotiations with an aim of reaching an agreement concerning the ILO Work in Fishing Convention, 2007⁷ at the end of 2009. Firstly their objective was to promote the ratification of the ILO Convention in order to create a level playing field for the sector in the EU. Secondly they wanted to undertake a first step towards codification of the EU social acquis in the sea fishing sector. They wanted to merge the provisions from the EU acquis and the ILO Convention C.188, in order to create a higher level of protection for fishermen in the EU. The EU social partners were of the opinion that EU provisions currently applicable to their sector were in need of updating. Thirdly, the EU social partners sought to improve the image of the sector, which they considered had deteriorated due to environmental issues, the decline in fish stocks, general disinvestment in the sector but also unattractive working conditions for young and skilled workers⁸. The agreement was concluded on 21 May 2012, and later amended on 8 May 2013. On 10 May 2013, the EU social partners requested the Commission to implement their agreement by a Council decision according to Article 155(2) TFEU.

The objective of the agreement is, in line with Article 153(1)(a) and (b) TFEU, to improve the working and living conditions of workers on board sea fishing vessels with regard to minimum requirements for work on board (e.g. minimum age, medical certificate), conditions of service (e.g. content of the fisherman's work agreement, working time limits, right of repatriation), accommodation and food, occupational safety and health protection and medical care, i.e. medical treatment on board and ashore, based on the ILO Convention's provisions.

When management and labour jointly request implementation of their agreement by a Council decision based on a proposal of the Commission, in accordance with Article 155 (2) TFEU, the Commission can either accept or reject this request, but it cannot amend the text of the agreement. In accordance with the Better Regulation Guidelines⁹, and in order for the College to take an informed decision, the Commission services have prepared this proportionate impact assessment which includes an assessment of the representativeness of the signatories, the legality of the agreement vis-à-vis the EU legal framework (See Section 2) and the respect of the subsidiary and proportionality principles. An external study was commissioned to support the assessment of cost and benefits of the agreement. This study was conducted by ICF International¹⁰. Given the transparency of the process and the role entrusted to the social partners by Article 155 TFEU, no additional public consultation has been carried out¹¹

⁷http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

⁸ ICF International, Study on Costs and Benefits of a Council Decision implementing the European sectoral social partners' Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the ILO, November 2015

⁹ SWD(2015) 111 final

¹⁰ ICF International, "Study on Costs and Benefits of a Council Decision implementing the European sectoral social partners' Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the ILO", December 2015.

¹¹ http://ec.europa.eu/smart-regulation/guidelines/tool_7_en.htm

1. PROBLEM DEFINITION

Characterisation of the sector

At a global level, Asia dominates the production in the fishing sector worldwide. It has the largest percentage of the world's fishing fleet (73%), followed by Africa (11%)¹². China and Indonesia count for a quarter of the global fish harvest. Asian countries dominate the production worldwide, but typically consume most of the fish production domestically. This is in particular the case in China¹³. The EU fisheries industry is the fourth largest in the world. Fishing provides jobs for over 100,000 people. It supplies some 6.4 million tonnes of fish each year¹⁴.

Global trade in fish products is still dominated by EU Member States. Denmark, Spain and the Netherlands belong to the global top ten trading nations next to Norway, Canada, the United States and Chile. This dominance and the fact that the EU is one of the biggest importers of fish products, allow the EU to set standards that influence production and processes worldwide.¹⁵

The sea fishing sector involves 23 EU Member States, which are coastal states. According to the 2015 Annual Economic Report on the EU Fishing Fleet (STECF 15-07), the amount of Gross Value Added (GVA) and gross profit (all excl. subsidies) generated by the EU fishing fleet (excl. Bulgaria, Cyprus, Greece and Malta¹⁶) in 2013 was €3.4 billion and €1.3 billion, respectively. GVA as a proportion of revenue was estimated at 49% and gross profit margin at 20%. With a total net profit of €506 million for the EU fleet in 2013, 7.8% of the revenue was retained as net profit. Sixteen out of nineteen member states (excludes Bulgaria, Cyprus, Greece and Malta) generated net profits in 2013; the remaining three Member States (Belgium, Finland and Portugal) generated net losses.

In most Member States, the share of single-vessel enterprises by far outweighs those with several vessels. The share of such enterprises¹⁷ is largest in Lithuania (where 100% of enterprises consist of only one vessel), Belgium (98%), Finland (97%), Malta (97%), and the United Kingdom (96%). Conversely, Latvia is the country with a highest number of enterprises with more than 5 vessels, although this remains a comparatively low proportion of

¹² The Work in Fishing Convention, 2007 (No. 188): Getting on board, Issues paper for discussion at the Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188), Geneva, 15–17 May 2013/International Labour Office, Sectoral Activities Department. Geneva, ILO, 2013, p. 2.

¹³ OECD (2015) Executive Summary, OECD Review of Fisheries: Policies and Summary Statistics 2015, OECD Publishing, Paris.

¹⁴ http://europa.eu/pol/fish/index_en.htm

¹⁵ OECD (2015) Recent trends in OECD fisheries and aquaculture in *OECD Review of Fisheries: Policies and Summary Statistics 2015*, OECD Publishing, Paris

¹⁶ Data from these Member States are not included in the 2015 The 2015 Annual Economic Report on the EU Fishing Fleet (STECF 15-07), due to data quality issues (see p. 3 of the report).

¹⁷ In terms of applicability of the EU OSH legislation to fishing vessels, the main parameter size is size. Directive 93/103/EC applies to fishing vessels 15 or 24 meters and over, whilst Directive 29/92/EEC (Medical treatment on board vessels, also including fishing vessels) as well as Directive 89/391/EEC and its individual directives (where relevant) apply in full to all fishing vessels irrespective of size.

the total number of enterprises (5%)¹⁸. More than 100,000 people work on board vessels in this sector. Greece, Italy and Spain have the largest fleets in terms of number of vessels¹⁹. Consequently, the number of enterprises in the sea fisheries sector is highest in those Member States with the biggest fleet in terms of vessels, gross tonnage and engine power. In 2012, Greece was the country with the largest number of fishing enterprises (almost 14,000), followed by Spain, Italy, France, the United Kingdom and Portugal (See Annex 5).

Structure of the sector

Box 1: Some data concerning sea fisheries sector²⁰	
Number of enterprises in the sector within the EU:	61,274
Number of EU fishing vessels ²¹	80,468
Total number of fishermen in the EU ²²	108,482
Total number of employed fishermen ²³	59,665
Total number of self-employed without workers ²⁴	29,290
Total number of self-employed with workers ²⁵	15,187
Turnover sea fisheries sector:	6.9 billion Euros

In terms of employment, the countries with the largest fleet (Greece, Italy, Spain, Portugal,) account for around more than half of the employment within the EU. Taking into account the countries with a larger fleet such as France, the Netherlands, Poland, and the United Kingdom, these eight countries make up 84% of the sector in total employment terms and 87% in terms of FTE (See Annex 5).

¹⁸ ICF study, p. 14-16

¹⁹ Greece had the largest fleet in 2013 (>16,000 vessels), followed by Italy (>14,000 vessels) and Spain (>10,000 vessels)

²⁰ Employment data is published as part of the Labour Force Survey (EU-LFS) (agriculture, farming and fisheries). Data on the fisheries sector (level 3 NACE data) was requested specifically for this study. However, employment data is only available for 16 countries and is missing for BE BG, CY, DK, IE, LV, and SI. The EU LFS data was supplemented with national sources, ICF study, p.20-21

²¹ EU vessel data

²² This includes employed, self-employed and family workers, ICF Study, p.24

²³ Calculation based on ICF study, table 7 Employment, self-employment and family workers in the fisheries sector, 2014

²⁴ Total number of self-employed without workers ICF study p. 24

²⁵ This metric from the EU-LFS indicates the share of self-employed individuals who have employees. As the only available relevant data, this has been used as a proxy for the share of self-employed working on the same vessel with employees, ICF Study p, 24

Table 1: Employment: workers, family workers and self-employment in the EU fisheries sector in 2014, by share of category out of total employees

Row Labels	Employee	Family worker	Total self employed	Self-employed with employees (out of total employees) ²⁶	Self-employed without employees (out of total employees)
Lithuania	100%	0%	0%	0%	0%
Portugal	71%	1%	27%	9%	18%
Spain	67%	2%	29%	13%	16%
Germany	65%	0%	35%	31%	4%
Croatia	62%	0%	38%	18%	20%
Italy	56%	0%	44%	14%	30%
Poland	56%	17%	27%	0%	27%
Romania	51%	7%	42%	13%	29%
France	49%	8%	43%	17%	26%
United Kingdom	49%	7%	44%	18%	26%
Finland	39%	0%	61%	0%	61%
Estonia	36%	6%	58%	17%	41%
Netherlands	27%	0%	73%	37%	36%
Sweden	20%	0%	80%	8%	72%
Malta	22%	0%	78%	0%	78%
Greece	3%	7%	90%	15%	76%
EU28	55%	3%	41%	14%	27%

Source: LFS data available by special request [stapro].

The share of self-employed in the sector proved difficult to determine, due to the lack of comparable, sufficiently disaggregated data²⁷ and also due to the fact that the definition of self-employed is determined at national level. An attempt was made to determine the number of self-employed based on the form of payment. Most fishermen who are paid on the basis of "crew share"²⁸ are often self-employed. Some Member States like the United Kingdom and the Netherlands consider fishermen paid on the basis of crew share as self-employed while

²⁶ This metric from the EU-LFS indicates the share of self-employed individuals who have employees. As the only available relevant data, this has been used as a proxy for the share of self-employed working on the same vessel with employees.

²⁷ Due to the size of the sector, the data in the sea fisheries sector are for statistical purposes aggregated with aquaculture and processing. In terms of employment data it is often aggregated further with agriculture and forestry.

²⁸ This form of payment consists of a share of a catch minus costs.

other Member States consider them as employees. According to the data available²⁹, self-employment is limited in Estonia, Spain, Finland, France, Italy, Latvia, Portugal, Romania and Lithuania. Self-employment makes up around 30% of total employment in Cyprus, Denmark, Finland, Italy, Malta, and Poland. On the other hand, in Greece, Ireland, Slovenia and the UK, the share of self-employment in the sector is estimated between 60-90%³⁰. No data exist, which links employment to vessel size. For the EU as a whole the share of self-employed fishermen stands at 41% of total individuals working in the sector. Between 2008 and 2014, EU-LFS data records stability in the share of self-employment in the sector at 41% (See Annex 5 for more details on employment in the sector).

With regard to employment relationships, the sector is characterised by different employment relationships such as part-time or seasonal, informal employment relationships, or employment contracts for a number of voyages. The shares of part-time employment were highest in the Netherlands (24%), followed by Romania (23%) and Finland (20%) and lowest in Poland (4%), Greece (5%) and France (7%)³¹. In Spain, there is no obligation to have a written employment contract. In some Member States, such as Slovenia fishing is a seasonal and part-time occupation.

In terms of vessel size, fleets with the greatest share of vessels of 24 metres and over are registered in Belgium (44% of the Belgian fleet), Lithuania (28%), the Netherlands (20%) and Latvia (16%). Smaller fishing vessels (i.e. under 12 meters)³² were more prevalent in Romania (98%) and Finland (97%), Bulgaria (96%), Cyprus (96%), Greece (94%) and Estonia (94%).

Across those Member States making up the largest share of the EU fishing fleet, large vessels above 24 metres were relatively more prevalent in Spain (8%), whereas small vessels predominated in Greece (94%)³³.

1.1. Specific problems affecting the sector and its workers

1.1.1. Problem 1: Risk and the seriousness of accidents are high in the sector

Comparing the risks of accidents in the fishing industry with those for other occupational categories worldwide reveals that fishing is one of the most dangerous occupations worldwide both in terms of accidents at work and of occupational diseases. In 1999, the ILO estimated 24,000 deaths among workers in the sector each year in the world, representing an incidence rate of 80 per 100,000 workers. The risk is not proportional to the size of the sector. In addition, 24 million non-fatal accidents were estimated to take place per year. In the UK, the incidence rate of fatal accidents in the fisheries sector was 15 times higher than the national

²⁹The data of the EU-LFS indicates the share of self-employed individuals who have employees. As the only available relevant data, this has been used as a proxy for the share of self-employed working on the same vessel with employees. The self-employed working on the same vessel alongside employees fall under certain conditions within the scope of the agreement in the context of occupational safety and health conditions (see section 4.3)

³⁰ ICF study and European Foundation for the Improvement of Living and Working Conditions (2012) Representativeness of the European social partner organisations: Sea fisheries. Available at: http://www.eurofound.europa.eu/eiro/studies/TN1105068S/tn1105068s_3.htm

³¹ ICF study, p. 21

³² In terms of scope of the existing OSH legislation, the parameter (size) is however slightly different, as small vessels are vessels less than 15 meters in length.

³³ ICF Study p.14

average. In Sweden it was 22 times higher than the national average and in Spain 8 times higher than the national average. In Denmark, from 1989 to 1996, the incidence rate was 25-30 times higher than the rate for those employed on land³⁴. This trend remains within the EU and worldwide³⁵. Although the number of fatal accidents decreased over the period 2007-2012 with an overall reduction of 11%, the national trends are very different. In six Member States the number of accidents increased. 17 Member States saw no change in the number of accidents. In four Member States, the number of accidents decreased³⁶.

The number of non-fatal accidents has been decreasing. However, they still occur at rates much higher than the national average. Furthermore, underreporting of this type of accidents in the sector needs to be taken into account. Cuts, scratches, injuries, lashes and bruises are generally not even considered as accidents, but simply as part of the job³⁷. The risk of being involved in a non-fatal accident is 2.4 times greater in the fishing activity when compared with other industrial sectors. The scale of employment in the sector alone does not explain these results³⁸. According to research, almost 70% of the accidents happen at sea. In a 2009 survey³⁹, 69% of persons working in the sector reported that their most recent accident at work or in the course of the work resulted in sick leave in the past 12 months⁴⁰. Because of the seriousness of the accidents occurring in the sector, workers are normally absent longer than in other sectors. Out of 4,453 total non-fatal accidents in the sector, a large proportion led to 7 and more days of absence in 2012, whereas the proportion of accidents leading to less than 6 days of absence was relatively small. This leads to increased social security costs and reduced output for the employer⁴¹.

Table 2 Working days lost linked to accidents in the fishing and aquaculture sector (2012), by total number of accidents⁴²

	Less than one week		one week to one month		one month to six months		more than six months (permanent incapacity)	
	2008	2012	2008	2012	2008	2012	2008	2012
ES	217	142	1,668	1,311	915	908	33	87
PT	0	41	0	460	414	340	0	31
UK	0	0	0	0	0	0	0	0
IT	17	16	142	85	79	58	33	22

³⁴ FAO Fisheries Circular no.966: Safety at sea as an integral part of fisheries management, 2001

³⁵ Handbook for improving living and working conditions on board fishing vessels, ILO 2010

³⁶ ICF study, p. 34-36

³⁷ Report From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions on the practical implementation of Health and Safety at Work Directives 93/103/EC, COM(2009)599 final (fishing vessels) and 92/29/EEC (medical treatment on board vessels)

³⁸ ICF study, p. 33

³⁹ TNO (2009); Health and safety at work: Results of the Labour Force Survey 2007 ad hoc module on accidents at work and work-related Health and safety at work

⁴⁰ This is likely an underestimate for the sea fisheries sector, as non-fatal accidents are, as explained, underreported in the sector.

⁴¹ ICF study, p.32

	Less than one week		one week to one month		one month to six months		more than six months (permanent incapacity)	
DE	0	0	0	0	0	0	0	0
IE	61	36	81	21	41	14	0	0
DK	4	6	2	35	25	17	2	0
EL	0	0	22	18	3	12	0	3
HR		10		10		10		0
FR	5	1	25	17	6	6	2	3
PL	0	0	16	6	18	8	0	3
FI	3	4	17	8	7	2	1	2
MT	1	0	11	8	4	2	0	1
SE	0	0	2	4	2	0	0	0
EE	0	0	9	0	4	6	0	0
LT	0	0	1	1	5	0	0	0
SV	0	0	2	3	1	0	0	0
CY	0	0	0	1	0	0	0	1
RO	0	0	0	0	1	2	0	0
BE	0	0	4	0	0	0	1	1
BG	0	0	0	0	0	0	0	0
LV	0	0	2	0	0	0	0	0
NL	0	0	0	0	0	0	0	0
EU28	310	348	2,011	2,002	1,114	1,389	72	154

Source: ICF study: analysis of EU-LFS [hsw_n2_04] data

1.1.2. Problem 2: Risk and the seriousness of occupational diseases are high in the sector

At EU level, in 2007, 13.6% of fishermen reported one or more work-related health problems in the past 12 months. This is slightly higher than the EU average for all activities which is 12.8%. In 2007, 20.6% of persons in the EU fishing sector also reported exposure to factors that can adversely affect mental well-being, such as stress and long working hours. This number is higher than in all activities where this amounts to 16.6%. However, this percentage dramatically increases when this concerns factors affecting physical well-being. In 2007, 64.8% of persons in the EU fishing sector reported exposure to factors that can adversely affect physical well-being, such as weather conditions and working with heavy equipment.

The average EU percentage for all NACE⁴³ activities amounted to 39.8%⁴⁴ (See for detailed explanation section 1.2).

1.2. Main drivers

1.2.1. Work related factors

This has been confirmed by international, EU and national studies from the UK, Greece and France over the years⁴⁵. Fishermen have to work in a cramped and slippery workplace that is constantly moving. Due to increasing competition in the sector and due to fact that fishers depend on fish stock, they often work, irregular hours which causes fatigue and thus increases the risks to safety and health. They are not only exposed to risks when at sea but also when at port, while loading or unloading the catch, making reparations and boarding or leaving the vessel. In addition fishing vessels are normally isolated from immediate health care and the medical facilities available on shore.

According to a report by the European Parliament⁴⁶ on this issue, the four main categories of factors leading to accidents at work in the fishing sector are:

- The first category is human-related factors. This can be fatigue, stress, poor maintenance, and routine or navigation errors. These are the main causes for accidents.
- Another cause of accidents lies in technical factors such as failure to respect parallel standards during the design, the use of outdated and/or worn out equipment, the absence or the poor functioning of alarm systems and fire-fighting systems. About a quarter of the accidents are caused by these factors.
- The nature of the work itself and tasks involved, such as heavy lifting, risks of slips and trips on board vessels and work with potentially hazardous equipment in difficult environmental conditions also has a role to play.
- Finally, external environmental factors which mainly include meteorological conditions are also the causes of accidents at work in the sea fisheries sector.

There is a relation between accidents caused by human factors and the working conditions on board vessels. Accidents are often caused by fatigue due to long working hours, inadequate health and safety circumstances or working conditions. The risk of accidents to crews of small fishing vessels seems higher⁴⁷ than on large vessels due to the small number of crew and the many tasks carried out - often at the same time⁴⁸.

Regarding illnesses, the prevalence of the following diseases seem to be linked to the working conditions in the sector:

⁴³ The NACE code system is the European standard for industry classifications and was introduced in 1970. In 1990 a revised version became applicable. NACE stands for "Nomenclature Generale des Activites Economiques dans l'Union Europeenne" (General Name for Economic Activities in the European Union).

⁴⁴ ICF study, p. 40

⁴⁵ A detailed overview is presented in the ICF study, p.34.

⁴⁶ European Parliament, Directorate for Research: Safety and the causes of accidents in The fisheries sector, 2000

⁴⁷ Incidence rates for accidents tend to be higher on small vessels (Ref. e.g. Jensen et al., 2014 - A review of fatal accident rate trends in Fishing, <http://czasopisma.viamedica.pl/imh/article/download/IMH.2014.0011/27190>)

⁴⁸ European Agency for Safety and Health at Work, FAQ fisheries http://www.beswic.be/en/faq/osha_help_center_view?SearchableText=&category=fisheries

- musculoskeletal (musculoskeletal problems have been identified by several studies because of the use of heavy equipment and heavy manual work, e.g. handling the fishing gear and the catch, reparation of nets)
- respiratory (often caused by weather conditions⁴⁹, breathing gases, personal habits and life style)
- Cardiovascular incidents, (data on Body Mass Index (BMI)⁵⁰ and mortality show that fishermen are a particularly exposed occupational group. The BMI of fishermen seems to be larger than average (BMI is considered as an indicator for e.g. cardiovascular diseases and diabetes.)
- hearing impairment as an effect of exposure for several hours to the continuous noise of the boat's engine,
- stress, fatigue and psychological problems, for example, due to long working hours unevenly divided between periods of intense activity, pressure to work fast, prolonged isolation, lack of private space, sleep disturbance and disturbed sleep rhythm, night work, and other working conditions such as noise⁵¹, ship motions⁵².

As an example, a study on Andalusian fishermen found that the main disorders reported were musculoskeletal disorders, respiratory diseases, diseases of the digestive system, eye problems and skin problems. A total of 72% fishermen participating in the study reported taking some self-prescribed medication, and 60% of fishery workers smoked. Nine percent of fishery workers admitted taking illicit drugs and 3% reported using illicit drugs on board. The workers indicated that diets on board were poorly balanced. While on board, 62% of crews reported a subjective significant worsening of their previous health condition. Some fishermen were reportedly still going to sea with conditions incompatible with working at sea, such as insulin dependent diabetes and angina. According to the study prevention and medical checks before being allowed or considered to work are therefore very important⁵³.

A study on Polish coastal fishermen reports the same main illnesses as the Andalusian study. In order to improve fishermen's health and their working conditions the report indicates the importance of good quality food and water, working time limits and risk assessment to eliminate or reduce risks related to the work environment and the importance of medical checks prior to employment on board. In addition, self-awareness of risks should be raised⁵⁴.

At EU level, the percentage of persons reporting one or more work-related health problems in the past 12 months in 2007 is higher in the EU fishing sector than the average for all activities

⁴⁹ Weather conditions (unprotected exposure to UV-radiation and decreased immune system from working in cold conditions) can also have an impact in the health of the workers.

⁵⁰ Body Mass Index (BMI) is an established measure utilized by physicians and health experts to determine weight status (i.e. underweight, overweight or within a healthy weight range).

⁵¹ An OSH hazard that may contribute to fatigue is noise (e.g. from and in the engine room). Noise also impedes concentration and communication and can cancel other noises related to safety, e.g. alarms. Rest periods on board can also be not long enough for the ear to recover, which is worsened by the fact that workers often do not leave the vessel once their working day is finished. Noise is a constant feature during rest hours as well as working hours often affecting the entire crew. (Rodriguez et al., 2012 –International regulations on labour health and safety applied to fishing and maritime transport sectors. Are maritime workers under-protected?, *Int Marit Health* 2012; 63,3:117-124.

⁵² ICF study, p. 39

⁵³ Novalbos Et Al.: Occupational Health In Andalusian Fisheries, *Occupational Medicine* 2008;58:141–143

⁵⁴ Maria Jezewska, Marta Grubman-Nowak, Irena Leszczyńska, Bogdan Jaremin, Occupational hazards for fishermen in the workplace in Polish coastal and beach fishing — a point of view, *Int Marit Health*,2012; 63, 1: 40–48

with 13.6% (compared to 12.8%). In 2007, 20.6% of persons in the EU fishing sector also reported exposure to factors that can adversely affect mental well-being. This number is higher than in all activities where this amounts to 16.6%. However, this percentage dramatically increases when this concerns factors affecting physical well-being. Indeed, the same year, 64.8% of persons in the EU fishing sector reported exposure to factors that can adversely affect physical well-being which is by far more important than the average EU number for all NACE activities amounting to 39.8%⁵⁵.

1.2.2. *Ineffective legal framework*

International legal framework for fishermen has not entered into force

There is a number of international Conventions for the sea fishing sector, which have been concluded within the framework of the International Maritime Organisation (IMO) that deal with the safety on board the vessel, such as the Torremolinos International Convention for the Safety of Fishing Vessels 1977, the 1993 Torremolinos Protocol, the Cape Town Agreement of 2012⁵⁶ and the International Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995 (STCW-F)⁵⁷ (see Annex 6). However, with the exception of the STCW-F., they have not entered into force due to lack of ratifications by IMO Member States. The slow pace of ratification has different reasons depending on the country and the Convention: some countries mention the complexity of implementation and the narrow scope of application, developing countries considered the 1993 Torremolinos Protocol would be too onerous for them to apply, while other countries believed that their fishing fleet was already adequately covered by national legislation. The 2012 Cape Town agreement amended the Torremolinos Protocol in an attempt to trigger further ratifications, but this has only resulted in five ratifications as of January 2016.

While previous ILO conventions concerning the living and working conditions of fishermen have been ratified. They have only been ratified by a few EU Member States⁵⁸.

Table 3: Ratification by EU Member States of ILO Conventions in the sea fisheries

ILO Convention	Ratifications by EU Member States	Total
C.112 Ratifications of C112 - Minimum Age (Fishermen) Convention	Convention 112 was superseded by Convention 138 on the minimum age, which is a fundamental ILO Convention. It applies to all workers. It is ratified by all 28 Member States. Therefore Convention 112 was denounced. ⁵⁹	28
C.113 Medical Examinations	BE, BG, DE, ES, FR, HR, NL and PL	8

⁵⁵ ICF report, p. 35

⁵⁶ <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx>

⁵⁷ <https://www.imo.org/en/OurWork/HumanElement/Pages/STCW-F-Convention.aspx> Only five EU Member States have ratified it so far: Denmark, Spain, Latvia, Lithuania and Poland.

⁵⁸ <http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO>: Previous ILO Conventions have been ratified by eight or nine of the 23 EU Member States see www.ilo.org.

⁵⁹ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312257

C.114 Fisherman's Agreement	BE, CY, DE, ES, FR, IT, NL and UK	8
C.125 Fisherman's Competency Certificates	BE, DE and FR	3
C.126 Accommodation of Crews	BE, DE, EL, ES, FR, NL, SI and UK	8

Belgium, France and Germany have ratified all the ILO Conventions mentioned above. The Netherlands and Spain have ratified four out of five Conventions. As shown by Table 3, these Conventions dealt only with a few aspects of the living and working conditions for fishermen. They did not include important issues such as the quality of food and water on board, health and safety at work, the content of the employment agreement, working time, medical treatment on shore, and repatriation. Some Member States found the previous Conventions, such as Convention C. 126 on accommodation too detailed⁶⁰. Due to the developments in the sector, these Conventions, dating from the 1960s, were considered outdated. In 2002, the ILO started working on a complete and up-to-date set of international standards for the fishing sector, in order to guarantee proper protection for fishers on a global scale⁶¹.

The resulting ILO Work in Fishing Convention, 2007 which all EU Member States and the representative organisations of employers and workers supported at the time of adoption, has not yet entered into force⁶². It will only come into force twelve months after ratification by ten Member States of the ILO, of which eight are coastal States. According to the ILO database, as of January 2016, seven countries⁶³ had ratified the Convention.

Voting in favour of an ILO Convention does not automatically lead to its ratification. The EU can authorise the Member States to ratify this Convention, but it cannot oblige the Member States to do so. The EU authorised Member States to ratify the ILO Work in Fishing Convention, 2007 by Council Decision 2010/321/EU⁶⁴. The decision to ratify an ILO Convention is taken by the legislative authority of each EU Member State. As Member States are not obliged to ratify or give reasons for not ratifying, it is therefore not sure whether (and if so, when) all 23 Member States will ratify. This process can take several years. Currently, only France ratified the ILO Work in Fishing Convention, 2007. In case of a similar Convention, the ILO Maritime Labour Convention, ratification by all the EU Member States has not yet been completed, almost 10 years after the signing of the Convention.

⁶⁰ B. Saenen (2014) *The Causal Relation Between the European Union's Coherence and Effectiveness in International Institutions*, Centre for European Studies, University of Ghent.

⁶¹ ILO Handbook for improving living and working conditions on board fishing vessels, 2010 http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---ector/documents/publication/wcms_162323.pdf

⁶² The Convention was adopted during the International Labour Conference, 2007 of the ILO with 437 votes in favour, 2 votes against, with 22 abstentions. <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/pr-25.pdf>

⁶³ Argentina, Bosnia-Herzegovina, Congo, France, Morocco, Norway, and South Africa

⁶⁴ Council Decision of 7 June 2010 authorising Member States to ratify, in the interests of the European Union, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention No 188) OJ L 145, 11.6.2010, p. 12–12

Furthermore, some EU Member States might delay ratification as they are aware of the request of the EU social partners to implement their agreement in EU law. They expect the EU to come forward with a proposal.

Ratification by some of the EU Member States would lead to continuing different standards, in particular, on issues which are not yet included in the EU acquis, such as medical certificates for fishermen, the right to repatriation, medical treatment on shore. Different working conditions for fishermen within the EU would exist. In addition, this would lead different competitive positions between the Member States who have ratified the Convention and who have not.

EU Framework exists but is fragmented and not fully adapted to the specific features of the sector

EU legal provisions relevant to fishermen's living and working conditions are laid down in a number of legal instruments, notably EU labour law Directives and the EU occupational safety and health (OSH) legislation⁶⁵.

However, despite the fact that quite a number of OSH issues are already covered and addressed by the existing EU OSH acquis, a number of OSH provisions are limited to vessels of 15 meters and over (e.g. requirements on accommodation on board vessels such as ventilation, lighting, emergency exits etc.). The vessels below 15 meters are not covered by those specific provisions. The agreement covers in principle all fishing vessels⁶⁶. Some provisions are specifically addressed to vessels of a length of 24 meters or more or normally staying more than three days at sea.

Certain aspects of the living and working conditions such as the right to medical treatment on shore, compensation in case of occupational diseases and injuries and an obligatory medical certificate certifying the fitness for work of fishermen⁶⁷ are not featured in the existing EU OSH acquis. Other issues are covered by the EU acquis but in a broader way than in the ILO C.188 Convention. For example the current acquis only contains specific provisions on refrigerators or low-temperature food-storage equipment⁶⁸ and the precaution measures to be taken in relation to cooking and domestic appliances using heavy gases⁶⁹, but it does not contain a right to food of sufficient quality and quantity and the right to potable water to be provided to fishermen who live and work on the vessel⁷⁰. An obligation of an employer to carry out a risk assessment exists, but it does not foresee active participation of workers in

⁶⁵ A detailed description of the relevant acquis is provided in section 4

⁶⁶ Article 1(h) of the agreement: "*fishing vessel or vessel means any ship or boat, flying the flag of a Member State or registered under the plenary jurisdiction of a Member State, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing*";

⁶⁷ Which already exists for seafarers - Clause 13 of the Annex to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time for of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST), OJ L 167, 22.7.1999, and p.33-37.

⁶⁸ Directive 93/103/EC Annex I, point 13.3 and Annex II point 13.2

⁶⁹ Directive 93/103/EC contains the requirement for cooking and domestic appliances using heavy gases to be used only in well ventilated spaces with care being taken to avoid dangerous accumulation of gas. (Annex I, point 2.9 and Annex II, point 2.9

⁷⁰ Directive 93/103/EC contains the requirement for cooking and domestic appliances using heavy gases to be used only in well ventilated spaces with care being taken to avoid dangerous accumulation of gas. (Annex I, point 2.9 and Annex II, point 2.9

it⁷¹. On many of these issues, Member States have taken very different approaches⁷² (see legal analysis in 4.3 below) leading to an unlevelled playing field among EU firms in the sector.

Similarly EU labour law Directives, apply to fishermen. However, these rules apply to all workers, and are not adapted to the fisher's specific working conditions. Contrary to shore workers, sea fishermen often live and work at their workplace. The right to medical treatment ashore and the right of repatriation when a vessel enters into a foreign port are for instance not covered by the current EU Labour Law rules, while similar provisions exist for seafarers⁷³. The employment agreement of the fishermen needs to specify the number of voyages for which the fisherman is hired. This is an important aspect for fishermen who can be hired for one or more voyages and for the fishermen who do not have at this moment a written employment agreement. The owner of the fishing vessel is often the employer. He may not always be on board. Since the skipper of the vessel has a number of responsibilities during the voyage with regard to the crew, he would need to have access to the employment agreement while the fishermen are on board of the vessel. There are however no provisions on the need to carry the employment agreement of the fishermen on board.

Inspections tend to focus on safety first. Working and living conditions come second. In addition the difficulty of performing inspections of actual working conditions is the major practical problem: these are seldom carried out at sea, when the fishermen are actually working. Therefore involvement of the social partners and fishermen who work on the vessel is important in this respect. In terms of prevention, their involvement in risk assessment is indispensable. Risk assessments are compulsory under the current *acquis*. Practice shows that sometimes it is done as a simple check-list, which has no effect. Where risk assessments have been really implemented in practice, the experience shows that it has encouraged a discussion on the risks and preventative measures⁷⁴.

1.3. Who is affected and how?

Workers

The sector differs from the land based sectors in that the work takes place on board, in a closed and often times cramped workplace. It is an isolated workplace, normally at some distance of the nearest land. This is particularly the case for the distant water fleet. Fishermen often live and work often for days on board of the vessel in difficult circumstances with heavy equipment. They often do not return to their homes on a daily basis, so they are dependent on their employer, *inter alia*, for medical care on board, food, potable water, and accommodation.

⁷¹ Article 11 1) and 2) c) of Directive 89/391/EEC foresees that the employer shall consult workers and/or their representatives and allow them to participate in discussions on all questions relating to safety and health at work and participate or be consulted in advance in regard to the information relating to the assessment of the risks.

⁷² ICF study page 72

⁷³ According to the agreement the fisherman has the right to repatriation in case of individual dismissal or inability to carry out his duties or in case his employment contract expires.

⁷⁴ Report from the Commission to the Council, the European Parliament, the European Economic And Social Committee and the Committee of the Regions on the practical implementation of Health and Safety at Work Directives 93/103/EC, COM(2009)599 final

The workers in this sector are at a high risk of both fatal and non-fatal accidents. The high number of accidents cannot be explained by the size of the sector as the risk faced by the fishers is not proportional to the size of the sector. Fatal accidents lead to loss of lives and, for the dependants of the worker, to a loss of income. Non-fatal accidents lead to absences from work and loss of income. Ill-health due to occupational diseases or the after-effects of injuries and accidents have a negative impact on workers' well-being and push them to leave the sector. In a 2009 survey⁷⁵, 69% of persons working in the sector reported that their most recent accident at work or in the course of the work resulted in sick leave in the past 12 months. At EU level, the percentage of persons reporting one or more work-related health problems in the past 12 months in 2007 was higher in the EU fishing sector than the average for all activities with 13.6% (compared to 12.8%). The high numbers cited, do not, however, reflect the real figures as accidents and injuries are underreported in the sector. This could be linked to the perception amongst fishers that cuts bruises and injuries are not occupational accidents, but simply part of the job. However, the members of the International Maritime Organization (IMO) decided that the collection and analysis of statistical information on casualties, including fishing vessels and fishermen, should be prepared on an annual basis, they acknowledged in 1999 that there had been very limited response⁷⁶. (For a detailed description, see section 1.1.1 and 1.2.1).

Employers

For employers, a high rate of accidents, occupational injuries and diseases leads to employers' loss of output and higher costs due to the absences and the need to replace staff. Accidents in the fisheries sector tend to lead to long periods of absence. In 2012, a total of 4,423 non-fatal accidents were reported at EU level. About 45% resulted in an absence of between a week and a month, 31% to an absence of 1 to 6 months, and 3% to 6 months to a year⁷⁷.

Occupational diseases also lead to a higher staff turn-over as trained and skilled staff can no longer work in the sector and tends to leave the sector. Hard working conditions and a high rate of accidents and injuries makes fishing unattractive for young and skilled workers⁷⁸.

In Member States where the employer has to pay sickness benefit in case of a prolonged period of time, it leads also to higher costs for the employer. In case of compensation for occupational injury and death, this can lead to higher insurance premiums.

National authorities

For national authorities a high number of occupational accidents, injuries and diseases in a sector have consequences in terms of social security costs (sickness benefits, incapacity benefits, and social assistance) and healthcare costs.

⁷⁵ TNO (2009); Health and safety at work: *Results of the Labour Force Survey 2007 ad hoc module on accidents at work and work-related Health and safety at work*

⁷⁶ FAO (2001) Fisheries Circular NO. 966 FIIT/C966: *Safety At Sea as an Integral Part of Fisheries Management*

⁷⁷ ICF study, p.38

⁷⁸ ICF study, p. 45. With regard to young people this is reportedly the case in Belgium, where finding an appropriate crew remains a challenge for many vessel owners. Young potential fishermen prefer to work for dredging companies or in the tourism industry. *Source: 2015 Annual Economic Report on the EU Fishing Fleet*, p. 25. The British Safety Council also indicated this: British Safety Council (2015) *Safety Management, the Troubled Waters of the European Fishing Industry* <https://sm.britsafe.org/troubled-waters-european-fishing-industry>

A report published by the European Commission (2011)⁷⁹, indicates that overall approximately 4% of the world's Gross Domestic Product (GDP) is spent on the costs of addressing work related accidents and health problems. Economic growth would be favoured by a healthy of the workforce.

The external study shows that very limited information is available on the costs linked to occupational accidents and illnesses in the sector beyond the data on absences linked to accidents. Limited data was provided by national stakeholders on the number of claims for occupational disability in the context of the external study. In Spain the number of claims for occupational disability linked to accidents rose from 726 to 760 between 2008 and 2013. Claims for occupational disability linked to occupational illness rose in Spain between 2008 and 2014 from 96 to 113. In Italy the number of claims for occupational disability linked to accidents declined from 175-152. In Poland there were 10 claims for occupational disability linked to accidents in 2012, with a cost to the insurer of around 10,700 Euros. In France 235 claims for occupational disability linked to occupational illness were made in 2012⁸⁰.

1.4. How is the problem likely to evolve?

If no further specific legislation concerning working and living conditions is developed, it is reasonable to assume that the occupational safety and health problems in the sector will remain. Awareness, training and enforcement activities have led to a decrease of occupational accidents, injuries and disease. However, trends have shown that despite these measures the incidence rate of accidents has remains high compared to the national average in the EU Member States. In 2012, there were 154 accidents in sector in the EU which led to permanent incapacity. This accounts for 1% of the sector, and is over twice that of 2008 levels (72).

The incidence of occupational diseases and injuries remains high in the sector, compared to other sector. Any changes in the incidence of occupational accidents/illnesses in the fisheries sector are likely to be driven by changes in the workforce size. The sector will remain unattractive for young and skilled workers.

Any changes in the level of awareness of the health risks amongst workers and employers by prevention or risk assessments done together by employers and workers or their representatives could have a positive effect. Considerable challenges are linked to performing satisfactory risk assessments on fishing vessels. One such challenge is the fact that the work environment changes when the vessel is at sea and because risk assessments are often performed in port, some risks may not be reflected (e.g. changing weather conditions when operating, which may have an impact in the risks and hazards faced by the fishers), additionally risk assessments are often performed by management not necessarily working at sea (particularly for larger vessels). Risk assessment provisions tailored for the specific work environment (i.e. fishing vessels) and for the workers in the sector are key to make risk assessments an effective tool for improving OSH conditions on board. Actively involving the workers in the risk assessment would thus prove to be a very positive measure. Also prevention in the form of regular medical examination and certification would have positive effects on the occupational health and safety problems in this sector⁸¹.

⁷⁹ European Commission (2011) Socio-economic costs of accidents at work and work related ill-health; Report prepared by de Greef et al on behalf of the European Commission. The study used a series of case studies to assess the costs and benefits of measures to improve health and safety in the workplace.

⁸⁰ ICF study, p. 44

⁸¹ ICF study, p. 137

France is the only Member State who has so far, ratified the ILO Work in Fishing Convention, 2007. According to the information available to the Commission, it seems that Denmark, Estonia⁸², the Netherlands⁸³, and the United Kingdom⁸⁴ have established working groups to prepare for ratification. In Spain discussions have taken place between the Spanish authorities and representatives of the EU sectoral social dialogue committee in the sea fisheries sector in order to encourage ratification⁸⁵. In view of the inaction of some Member States and the different pace in preparing for ratification of others, different national approaches to health and safety in the fisheries sector will maintain the existing divergent level of protection and unlevelled playing field.

As a consequence, fishermen in the different EU Member States will not enjoy the same minimum protection levels. For example, in the case of an accident or serious illness, workers could be repatriated by some Flag States or abandoned in a foreign port by others. In addition, as sometimes ships fish in the waters of another Member State and their fish captures (or derived products) are sold across the single market, not acting would also entail a competitive advantage for Member States which have less favourable working conditions, compared to the Member States who have standards in place in accordance with the agreement.

2. WHY SHOULD THE EU ACT?

This initiative fits within the Commission's priority for a deeper and fairer Internal Market, in particular its social dimension. It is in line with Commission's work to establish a fair and truly pan-European labour market, which provides workers with decent protection and sustainable jobs⁸⁶. This includes among others, occupational safety and health protection, working time, social protection, and rights connected to the employment contract.

In its 2007 Communication reassessing the regulatory social framework for more and better seafaring jobs in the EU⁸⁷, the Commission sought to determine, against the background of the already extensive body of international conventions and standards, to what extent action may be needed to improve legal protection and working conditions for maritime professions in the EU and enhance the competitiveness of the EU maritime sector, including the fisheries sector.

The 2007 Communication also initiated a first phase of consultation of the EU social partners pursuant to Article 154 TFEU and invited them to "*examine the possibilities of a joint initiative to promote the application within the EU, of the provisions of the recent ILO Work in Fishing Convention, 2007*".

⁸² [http://www.riigikogu.ee/tegevus/eelnoud/eelnou/c3837e93-26b4-47c0-a842-f5770f817a57/Rahvusvahelise%20T%C3%B6C3%B6organisatsiooni%20kalandust%C3%B6C3%B6%20konventsiooni%20\(nr%20188\)%20ratifitseerimise%20seadus/](http://www.riigikogu.ee/tegevus/eelnoud/eelnou/c3837e93-26b4-47c0-a842-f5770f817a57/Rahvusvahelise%20T%C3%B6C3%B6organisatsiooni%20kalandust%C3%B6C3%B6%20konventsiooni%20(nr%20188)%20ratifitseerimise%20seadus/)

⁸³ Letter of the Minister of Social Affairs and Employment to the chair of the Parliament of 17 June 2013, parliamentary year 2012-2013, 29 427, nr.

⁹⁵ http://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2013Z12347&did=2013D25432

⁸⁴ The UK working timetable aims for ratification at the end of 2016. However, this could change depending on the national political context and legislative preparations. Ratification is subject to approval of the national legislative authorities. Source: Seafish Industry briefing - Labour issues in the fishing and aquaculture sector Focus: Working on UK fishing vessels, December 2014

⁸⁵ <http://www.thefishsite.com/fishnews/26781/spain-encouraged-to-ratify-ilo-work-in-fishing-convention-C.188/>

⁸⁶ President Juncker's State of the Union address in the European Parliament on 9 September 2015

⁸⁷ COM(2007) 591 final

Social partners were convinced of the need for action in the area and they therefore decided in 2009 to negotiate an agreement at Union level in accordance with Article 155(1) TFEU. Within their agreement they sought to consolidate and modernise the working and living conditions of fishermen taking into account the EU acquis. In order to align their agreement with the ILO Convention, C.188, they stipulated that their agreement will enter into force, when the ILO Convention C.188 enters into force⁸⁸. Subsequently, they asked this agreement to be implemented by a Council decision following a proposal from the Commission pursuant to Article 155(2) TFEU. Article 155 is therefore the legal basis for a proposal of a Directive implementing this EU social partner agreement.

2.1. Why could Member States not achieve the objectives of this initiative?

The fact that EU Member States voted in favour of its adoption, does not lead automatically to ratification. The decision whether or not to ratify lies with the legislative authorities in each Member State. As Member States are not obliged to ratify or give reasons for not ratifying, it is therefore not certain whether (and if so, when) all 23 Member States, which have a sea fishing sector, will ratify the ILO Work in Fishing Convention, 2007. This process can take several years⁸⁹. Despite the Council Decision to authorise Member States to ratify the ILO Convention C.188⁹⁰, the pace of ratification has been slow. Eight years after its adoption, only France has ratified the Convention. A few Member States (DK, EE, NL, and the UK) are preparing for ratification. Furthermore, Member States might be delaying ratification as they are aware of the request of the EU social partners to implement their agreement in EU law. They expect the EU to come forward with a proposal. Ratification by only some Member States would not allow ensuring a similar level of decent living and working conditions within the EU for fishermen and a level playing field in terms of competitiveness between the EU Member States. The agreement will ensure this by bringing about the simultaneous entry into force and uniform transposition in all Member States of the standards of the ILO Work in Fishing Convention, 2007 to which it refers .

2.2. What is the EU added value?

Fishing is a cross-border sector which operates worldwide. Fishing vessels sail under different EU flags, they operate also outside the territorial waters of the EU Member State concerned, in waters under jurisdiction of other Member States and in international waters. For example, ten Member State fleets operated in the NE Atlantic region in 2013; Belgium, Denmark, France, Germany, Ireland, Lithuania, the Netherlands, Portugal, Spain and the United

⁸⁸ The ILO Convention enters into force a year after 10 ILO Member States of which 8 coastal states ratify the Convention. At this moment seven ILO Member States have ratified the Convention. France is the only EU Member State who has ratified this Convention up till now. According to the information available, Denmark, Estonia, the Netherlands and the United Kingdom are preparing for ratification.

⁸⁹ In case of a similar Convention, the ILO Maritime Labour Convention, ratification by all the EU Member States, which have a maritime sector, has not yet been completed, almost 10 years after the adoption of the Convention:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312331

⁹⁰ Council Decision 2010/321/EU of 7 June 2010 authorising Member States to ratify, in the interests of the European Union, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention No 188).

Kingdom⁹¹. The EU distant-water fleet⁹² operates in international waters (high seas) and through bilateral agreements with countries outside the EU. These include fishing areas in the North, South and Central Atlantic, Indian, Pacific and Antarctic (or Southern) Oceans.

While fishermen on board fishing vessel are nationals of the Member State which flag the vessel flies, fishermen of another EU Member State or third country often also work on board of fishing vessels. According to the available data, within the EU 95% of the fishermen is of the Member State's nationality in which the fishing vessel is registered or which flag it flies. There are differences between the EU Member States, for example 79% of the crew on Estonian flagged vessels is of Estonian nationality, while 100% of the crew is of Polish nationality on Polish flagged vessels⁹³.

The EU already has a shared approach to fishing through the Common Fisheries Policy. As we have seen, that is not the case for labour standards in the fisheries sector, where national differences persist. These differences have an impact on competitiveness, because they impose different costs on operators. As a consequence, EU action leading to a consolidated EU legal framework for the sea fishing sector would help create a more level playing field, aligning the situation of fishermen with that of other maritime professions⁹⁴. Such a framework would build on existing international and EU standards, taking into account the specific work environment in this sector the EU legal framework would contain minimum standards for living and working conditions on board of EU fishing vessels. This would be in line with suggestions made by some Member States and social partners, who indicated that a general alignment of the EU acquis with the provisions of ILO Convention C. 188 would be desirable⁹⁵.

An EU framework would lead to an EU level playing field across the EU Member States in the sea fishing sector. Fishermen would have the same minimum protection, across the EU, All Member States would have to implement the same minimum rules, also on the issues which are now not part of the EU acquis such as medical certificates for fishermen and medical treatment ashore and the right to repatriation. On these issues the Member States have taken diverging approaches. For example as the legal analysis in section 4.3.2 will show, on the issue of a medical certificate, some Member States, such as the UK, Slovenia and Romania have no specific legislation in place for the fisheries sector, some Member States, e.g. Ireland, Italy and Sweden have fewer medical checks as prescribed by the agreement. Portugal exempts small vessels. The Latvian authorities indicated that they have to introduce minor changes to comply with the agreement. Other Member States⁹⁶ provided for a medical certificate for fishermen in accordance with the provisions of the agreement. (See for further details section 4.3.2). This leads to an uneven level playing field within the EU in terms of working conditions. The working conditions of fishermen are different depending on the

⁹¹ The 2015 Annual Economic Report on the EU Fishing Fleet (STECF 15-07), p. 104

⁹² In 2013: Spain, France, Lithuania, Portugal, Poland, Latvia, UK, Germany, Netherlands, Denmark, Estonia and Ireland operated in distant waters. Source: The 2015 Annual Economic Report on the EU Fishing Fleet (STECF 15-07), p. 135

⁹³ ICF study, p.23 and Data Annex to this study

⁹⁴ Such a legal framework already exists in EU law for seafarers: 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. 30–50

⁹⁵ Results of the public consultation on International Ocean Governance by DG MARE, http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/ocean-governance/index_en.htm

⁹⁶ BE, DE, EE, EL, ES, FI, FR, HR, LT, NL, PL

nationality of the vessel. Also while working on the same vessel, fishermen could have different working conditions. Fishermen sailing on board Spanish flagged vessels have a right to repatriation according to the Spanish legislation, if they are registered under the Spanish social security legislation (See section 4.3.6). Fishermen working on board Italian fishing vessels have no right of repatriation. This could mean that Member States not having some standards in place would have a competitive advantage against the Member States who have these rules in place.

In addition, a transparent, flexible, up to date legal framework is expected to foster a culture of prevention and compliance. It is expected to contribute to the image of the sector and make it more attractive for young and skilled workers.

This initiative will also give additional protection to workers and employers as it will enable stakeholders in the sea fisheries sector to make use of the complaint procedures at EU level in case of a breach of the national legislation with the requirements of the agreement.

As mentioned in section 1, EU Member States belong to the top ten trading nations in fishing products and one of the biggest importers of fishing products. The implementation of the agreement in EU legislation will set an example and give the EU a stronger position to encourage ratification of the ILO Convention C.188 worldwide. This is particularly important in the context of the fight against illegal, unreported and unregulated (IUU) fishing⁹⁷, within EU waters as well as beyond. Vessels engaging in IUU fishing seek to evade control by flag, coastal and port States, which makes it extremely difficult to enforce labour standards. As UNODC has highlighted "the [...] most disturbing finding [...] was the severity of the abuse of fishers trafficked for the purpose of forced labour on-board fishing vessels"⁹⁸

IUU fishing is often associated with substandard vessels and fishermen working on board in very poor conditions. Sometimes this amounts to labour exploitation⁹⁹. It leads to unfair competition for vessel owners who respect the rules and provide decent living and working conditions¹⁰⁰. IUU fishing fleet in some areas are so accustomed to act in breach of the rules in relation to quotas limitations, catch documentation and gear restrictions, that contraventions of marine living resource management and conservation regulations is often linked to forced labour or trafficking in persons.

IUU fishing damages fish stocks, negatively affecting the fishing communities and workers who rely on them for their income. At the same time the offence of IUU fishing is committed by fishermen often driven by difficult circumstances (low fish stock, unemployment). It has been argued that if fishermen are protected by standards ensuring decent living and working conditions, the likelihood that the offence is committed will be considerably reduced¹⁰¹.

⁹⁷ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

⁹⁸ UNODC study: "Transnational Organized Crime in the Fishing industry", UNITED NATIONS Vienna, 2011

⁹⁹ ILO (2015), International expert meeting on labour exploitation in the fishing sector in the Atlantic region, Oslo, Norway, 25-26 November 2015, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_429048.pdf, p. 2

¹⁰⁰ FAO fisheries report No. 637, 2000.

¹⁰¹ Uilapesca-CRES (2012), IUU Fishing and its Relation to the Rights of Fishworkers in International Law, p.

Moreover, fishing operators who exploit their crew enjoy an unfair competitive advantage because of lower labour costs. The Convention would provide an additional legal basis to fight labour abuses, thereby reducing the profitability of criminal activities linked to IUU. An EU action in this sense supports the IUU EU policy and ensures its consistency inside EU and as regards third countries.

2.3. Assessment of the representativeness of the EU social partners and the legality of the clauses

When the Commission receives a request of the EU social partners to implement their agreement in EU legislation, it can accept or reject the request, but it cannot change the text of the agreement. The Commission also has to assess the representativeness of the EU social partners who are the signatories to the agreement and the legality of the clauses. The detailed analysis can be found in Annex 1.

2.3.1. Representativeness of the EU social partners

When assessing a request from EU social partners to implement their agreement in EU law according to Article 155 TFEU, the Commission looks at representativeness and mandate of the social partners for the area concerned by the agreement. This ensures that the request is in line with the provisions of the TFEU and that the agreement can count on a broad support amongst those actually concerned.

In accordance with Article 1 of Commission Decision 98/500/EC of 20 May 1998¹⁰², social partners at the European level should fulfil the following criteria:

- a. they shall relate to specific sectors or categories and be organised at European level;
- b. they shall consist of organisations which are themselves an integral and recognized part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;
- c. they shall have adequate structures to ensure their effective participation in the work of the [Sectoral Dialogue] Committees.

These conditions should be fulfilled at the time when the agreement was signed. At the moment of signature of the agreement, Croatia was not yet a member of the EU at the time of the conclusion of the agreement. In order to assess the representativeness of the EU social partners, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) conducted a study in 2012¹⁰³.

The agreement concerns working conditions in the sea-fisheries, which matches with the sectoral delimitations of the sea-fisheries sectoral social dialogue Committee. Therefore, congruence between the coverage of the Committee and of the agreement is given.

The social partners participating in the Committee are Europêche and Cogeca on the employer side and ETF on the workers side.

¹⁰² Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Social Dialogue Committees promoting the dialogue between the social partners at European level, OJ L 225, 12.8.1998, page 27

¹⁰³http://www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn1105068s/tn1105068s.pdf

For Européche, the Eurofound representativeness study from 2012 identifies members in 11 Member States, namely BE, DE, DK, ES, FR, EL, IT, NL, PL, SE and UK.

As the economic situation of the sector has deteriorated since 2012/13, keeping the membership is a challenge for the employer organisations at EU and national level. However, Européche has managed to secure cooperation of the Latvian and Lithuanian employer associations.

Cogeca represents the general and specific interests of European agricultural, forestry, fisheries and agri-food co-operatives. It has members related to sea fisheries in the following 11 Member States: CY, DE, EE, ES, FR, EL, IE, IT, MT, NL and SI. This means that on the employer side, altogether 16 countries are represented in the committee.¹⁰⁴

On the workers side, ETF had membership related to sea-fisheries in 11 countries, namely BE, BG, DE, DK, ES, FR, IT, NL, PL, PT and UK, which leaves – beyond the aforementioned landlocked countries - fishermen in 11 Member States, i.e. CY, EE, EL, IE, FI, LV, LT, MT, RO, SE, SL not represented. According to the employment figures for the sector, for most of these countries the numbers of employees are around a 1000 workers (in most of these countries, employment is considerably smaller). While IE, EL, RO and SE have more than 1000 fishermen, a very large share of the fishermen is self-employed¹⁰⁵.

In conclusion, with the exception of Portugal and Romania, there are no Member States where employer organisations active in sea-fishing are not represented at the European level, taking into account that the sector is relatively small in Romania. This leads to the conclusion that European level dialogue is on the side of employer organisations highly inclusive and that Européche and Cogeca can together be considered as representative for the employers in the sector. As indicated above the same is true for ETF on the workers' side. The eight Member States¹⁰⁶ which make up 84% of the sector in total employment terms and 87% in terms of FTE are represented within the EU social dialogue. This leads to the conclusion that the social partners who have signed the agreement are representative of the sector and can therefore justly request the Commission for implementation of an agreement according Art. 155 TFEU.

2.3.2. *Legality of the clauses*

The Commission has examined the legality of the agreement. It has scrutinised each clause and has not found any to be contrary to EU law. The obligations which would be imposed on the Member States do not arise directly from the agreement between the social partners. They would rather result from its implementation by means of a Council decision, i.e. a directive. The scope and content of the agreement remains within the fields listed in Article 153(1) TFEU. Article 3(3) of the agreement contains a non-regression clause, which safeguards the existing level of protection of workers. Article 4 of the agreement states that it shall not affect any law, award or custom, or any agreement between fishing vessel owners and fishermen, which ensures more favourable conditions to fishermen than those provided for in the agreement. In addition, the necessary safeguards of the *acquis* will be included in the proposal

¹⁰⁴ Joining the EU on 1 July 2013, Croatia was not yet a member of the EU at the time the agreement was signed.

¹⁰⁵ According to the ICF study, EL would have more than 1000 employees. For EL table 1 indicates that 76% of the fishermen are self-employed without employees.. More than 70% of the fishermen in SE are self-employed. IE has also a large number of self-employed. About 40% of the RO fishermen are self-employed.

¹⁰⁶ Greece, Spain, Italy, France, the Netherlands, Poland, Portugal and the United Kingdom.

for a Council directive (more favourable provisions and non-regression), to which the agreement will be an annex.

3. WHAT SHOULD BE ACHIEVED?

3.1. General Objective

The general objective is to enhance the working and living conditions for fishermen working on vessels flying the flag of an EU Member State.

3.2. Specific objectives

In order to reach the general objective set above, the present agreement has the following specific objectives:

- To improve occupational safety and health for fishermen within the EU;
- To establish a consolidated legal framework which is adapted to working conditions for the sea fishing sector.

3.3. Consistency with other EU policies and the Charter of Fundamental Rights.

The ex post evaluation of the EU OSH acquis is ongoing and a number of key issues for the revision of the acquis have not been defined yet, namely in relation to the new architecture and exact content of the provisions of the future OSH regulatory framework. During the preliminary work, stakeholders indicated the need to align the current OSH provisions for the maritime and fisheries sector with the recent ILO Conventions, such as the ILO Work in Fishing Convention, 2007. It is clear that the agreement complements the current OSH acquis and aligns it with the Convention. The future revision of the EU OSH framework will have to take the agreement into account.

The EU also contributes to improving fishermen's conditions through the Common Fisheries Policy (CFP). The objective of the CFP is to ensure that fishing and aquaculture activities contribute to long-term environmental, economic, and social sustainability. Indeed, healthy fish stocks will in turn benefit fishermen. Managing resources in a sustainable manner will increase the competitiveness of the EU fisheries sector, creating new jobs.

The objectives of the CFP are also promoted internationally, ensuring that EU fishing activities outside EU waters are based on the same principles and standards as those applicable under EU law, and promoting a level-playing field for EU operators and third-country operators. To this end, the EU actively seeks to lead the process of strengthening the performance of regional and international fisheries organisations in order to better enable them to conserve and manage marine living resources under their purview, including combating illegal, unreported and unregulated (IUU) fishing¹⁰⁷. In line with recent international case law, flag, coastal, port or market States have due diligence to fulfil their duties incumbent upon them under international law¹⁰⁸. The EU cooperates with third countries and international organisations for the purpose of improving compliance with

¹⁰⁷ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

¹⁰⁸ See ITLOS case No 21 retrieved:

https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_227_EN.pdf

international measures, including the respect of human rights, through in particular safe working conditions. This constitutes an essential element of sustainable fisheries partnership agreements, which contain a specific human rights clause. This is consistent with the overall Union development policy objectives.

Several studies have confirmed that low health and safety standards and poor working conditions are both a driver of IUU fishing and one of its consequences. On one hand, operators may choose to engage in IUU fishing because of the lower cost of limited health and safety checks and other controls over working conditions¹⁰⁹. On the other hand, workers on IUU vessels are vulnerable to all sorts of labour violations, as there is no way of ensuring decent working conditions on a vessel engaging in illegal activities. This also has negative impacts on international efforts to promote better ocean governance by undermining efforts to achieve international progress on social standards for fishermen. Improving the social situation of fishermen is expected to reduce the risk of abuses and increase the cost of engaging in IUU fishing, making it a less attractive option¹¹⁰. Thorough implementation of ILO Conventions worldwide would therefore have a positive impact both on fishermen's working conditions and on the incidence of IUU fishing. By incorporating the agreement of the ILO social partners on the ILO work in Fishing Convention in EU legislation, the EU will be in a stronger position to promote their implementation in partner countries worldwide.

The objectives of this initiative are also in line with the protection of the rights mentioned in the EU Charter of Fundamental Rights of the European Union, in particular the rights protected under Articles 20 (equality before the law), 31 (fair and just working conditions) and 32 (prohibition of child labour and protection of young people at work) of the Charter.

4. POLICY OPTIONS

The Commission can consider only two options:

- **No EU action (the baseline scenario):** The current EU labour and occupational safety and health legislation applicable to fishermen in the sector will remain in force.
- **Propose the implementation of the agreement by a Council decision in accordance with Article 155 TFEU:** The EU acquis will be complemented by a Directive which will provide more specific rules at EU level on living and working conditions for the sea fisheries sector.

4.1. Option 1 Baseline Scenario.

With the exception of France, EU Member States have not yet ratified the ILO Work in Fishing Convention.

The current EU acquis with regard to living and working conditions would remain in force. At this moment no other specific EU initiatives in the field of labour law, social security or safety and health of workers are planned for the sea fisheries sector.

¹⁰⁹ Agnew, D. and Barnes, C., Economic aspects and drivers of IUU fishing: building a framework, in Gray, K. et al. (Ed.) (2004). Fish piracy: combating illegal, unreported and unregulated fishing, P. 14

¹¹⁰ European Parliament: Beke, M. and Blomeyer, R., Illegal, Unreported and Unregulated fishing: sanctions in the EU, July 2014, p. 27

With regard to the different subjects covered by the EU social partner agreement, this would mean that the fishermen would remain covered by the EU labour law Directives, such as the Written Statement Directive¹¹¹, the Working Time Directive¹¹², and the Temporary Agency workers Directive¹¹³. The current EU rules on the coordination of social security are would remain applicable to sea fishermen (See Annex 6 for further details).

The EU OSH Directives apply to all economic sectors, both public and private¹¹⁴. Directive 89/391/EEC and its relevant individual directives apply to workers in all fishing vessels irrespective of size. Two specific Directives were introduced to tackle the specific risks and to promote the occupational health and safety of fishermen. Directive 93/103/EEC¹¹⁵ defining the minimum safety and health requirements for work on board fishing vessels and Directive 92/29/EEC¹¹⁶ on the minimum safety and health requirements for improved medical treatment on board vessels. Directive 93/103/EC lays down minimum safety and health requirements applicable to new fishing vessels¹¹⁷ with a length between perpendiculars of 15 m or over and to existing fishing vessels with a length between perpendiculars of 18 m or over. In addition, EU OSHA produced a Risk assessment for small fishing vessels as well as information material on safe maintenance of fishing vessels

4.2. Option 2 Implementation of the agreement by a Council Directive in accordance with Article 155 TFEU

The agreement is based on the ILO Work in Fishing Convention, 2007. It covers most areas of the Convention itself. It contains minimum requirements concerning minimum age and medical examination, manning requirements, limits to daily and average weekly working time, health protection and medical care in case of sickness, occupational injury or death, fisherman's work agreement, private labour market services, and occupational safety and health and accident prevention. The agreement does not cover the provisions concerning remuneration or pay¹¹⁸, and compliance and enforcement of the ILO Convention¹¹⁹, as these fall outside the scope of Article 153 of the Treaty.

The agreement will apply to fishermen employed on all fishing vessels engaged in commercial sea fishing. It will also apply to all other fishermen (self-employed) who are present on the same vessel with employed fishermen, in order to ensure protection of the workers' health and safety on board the vessel.

¹¹¹ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p. 32–35

¹¹² Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19

¹¹³ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, O.J. L 327, 5.12.2008, p. 9

¹¹⁴ Article 2(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1

¹¹⁵ Directive 93/103/CE of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels, OJ L 307, 13.12.1993, p. 1

¹¹⁶ Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, OJ L 113, 30.4.1992, p. 19

¹¹⁷ New vessel in this context means that the Directive applies to vessels whose building contract was placed after 23 November 1995.

¹¹⁸ Article 23-24 of the ILO Work in Fishing Convention, 2007

¹¹⁹ Articles 40-44 ILO Work in Fishing Convention, 2007

The agreement provides minimum standards. When the EU Member States transpose the agreement in national legislation; they are allowed to maintain more favourable standards. In addition, the agreement provides for some flexibility by providing for a possibility to gradually transpose the agreement for specific categories of vessels or fishermen within a period of 5 years, in case of substantial problems¹²⁰.

The national authorities of the Member State are obliged to consult the national social partners on the transposition of the agreement in national law. This could facilitate the implementation of the agreement as these organisations will be able to support and advise the national authorities during the process¹²¹.

As is the case with the current acquis, the national authorities will have to ensure the enforcement of their national legislation transposing the agreement. This normally will be done by the national labour inspectorates, fisheries or maritime authorities and by the judicial authorities. It is up to the Member State to nominate the competent enforcement authorities. National social partners could also support enforcement authorities to improve working conditions as they will have the expertise on working conditions in the sector and have an important role to play in supplying information and raising awareness.

Once the Directive implementing the agreement in EU legislation has entered into force, citizens will have the possibility to complain to the Commission via the normal Commission's complaint procedures if they are of the opinion that the national legislation is in breach of the agreement¹²².

4.3. Legal analysis of the differences between the agreement provisions, the existing EU provisions and the national level

Before assessing the impacts of implementing the proposed agreement, the substantial changes as compared to the current situation need to be identified. This is a challenging task as there is a very complex set of existing rules in place. In the remainder of section 4.3, for each of the areas of the agreement, first the substantial changes are identified, followed by a table which aims to indicate which Member States already have legislation in place for the sea fisheries sector which is equivalent or more favourable for the protection of workers when compared to the provisions of the agreement, and which Member States have less favourable provisions than the agreement¹²³.

Provisions of the agreement which are similar to the provisions of the existing EU Directives already applicable to the sea fishing sector, or which are limited to establishing further

¹²⁰ Article 3 of the agreement

¹²¹ This obligation to consult national social partners in the sea fisheries sector is for example provided if national authorities consider exemptions of on the minimum age and exemptions on the obligation of the fishermen to have a medical certificate.

¹²² The experience with Directive 2009/13/EC concerning the EU social partner agreement on the implementation of the ILO Maritime Labour Convention, which is a similar Convention for the maritime sector, shows that seafarers and other stakeholders in the sector make use of the possibility to inform the Commission on alleged breaches of this Directive in the national legislation of a Member State.

¹²³ The provisions in the agreement are compared to the national legislation of the Member States. If a Member State's provisions on working time are considered being more favourable, it means that these provisions contain more protective provisions. Less favourable provisions means that the provisions are less protective than the provisions in the Agreement

specification are not compared (e.g. manning requirements, and the obligation of a crew list, private labour market services).

Information on the national legislation of the different Member States is mainly based on the information obtained from the research and from the information supplied by national authorities of the different Member States as part of the external study carried out in support to this impact assessment¹²⁴. While, in the context of this study all 28 Member States have been contacted with the request to supply information, information from certain Member States was not received. Consequently, any information on these Member States is based on further desk research.¹²⁵

4.3.1. Scope and applicability

Article 1(e) of ILO Convention C.188, defines fishermen as “every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”. This definition includes both employed as self-employed fishermen.

As the social partner’s agreement addresses fields covered by Article 153 TFEU, the agreement applies to fishermen who are employed on board a vessel (i.e. workers). The agreement is extended to self-employed working alongside workers on the same vessel, whenever there is a link (direct or indirect) to the protection of the health and safety of workers employed on the same vessel. This corresponds to the current scope of Directive 93/103/EC and Directive 92/29/EEC in the sense that provisions therein are also extended to the self-employed whenever there is a link (direct or indirect) to the protection of the health and safety of workers employed on the same vessel¹²⁶.

While the ILO Convention C.188 applies to vessels irrespective of the ownership, the agreement applies to vessels registered within the plenary jurisdiction or flying the flag of a Member State. Directive 93/103/EC¹²⁷ and Directive 92/29/EEC¹²⁸ also refer to the plenary jurisdiction or the flag of the Member State.

Table 4 Scope and applicability

¹²⁴ ICF Study: "Costs and Benefits of a Council Decision implementing the European sectoral social partners' Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation", November 2015

¹²⁵ In the context of the external study, Austria, Czech Republic, Hungary, Luxembourg and Slovakia replied that they do not have a sea fishing sector due to their geographical location. No information was received in the course of this study from Bulgaria, Cyprus, Malta, Poland and Romania. Any information on these five countries is based on further desk research (ICF, p.68).

¹²⁶ This is also indicated in recital 12 of the Agreement.

¹²⁷ Article 2(a) of Directive 93/103/EC Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

¹²⁸ Article 1(a) of Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels.

EU acquis¹²⁹	Agreement	MS having equal or more favourable standards	MS having less favourable standards or no standards in this area
Employed fishermen and self-employed fishermen working on board the same vessel in the context of health and safety protection	Employed fishermen and self-employed fishermen working on board the same vessel in the context of health and safety protection	BE, BG, CY, DK, DE, EE, EL, ES, FI, FR, HR, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI and UK	SE
Vessel flying the flag or registered under the plenary jurisdiction of a Member State	Vessel flying the flag or registered under the plenary jurisdiction of a Member State	BE, BG, CY, DE ¹³⁰ , DK, EE, EL, FI, FR, IE, IT, LT, LV, MT, NL, PL, RO, SE, SI and UK	ES, HR, and PT ¹³¹

4.3.2. *Minimum requirements for work on board fishing vessels*

Minimum age

According to the ILO Convention, the minimum age for working on a fishing vessel is 16 years of age. The competent authority may authorise a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing. Night work is forbidden under the age of 18. Night is defined as the period between midnight and 5 am. Under certain conditions, the competent authorities after consultation of the national social partners can authorise exemptions in the context of training.

The agreement provides the same age limits as the ILO Convention, but adds that young people between the ages of 16-18 at work need to be supervised both during the day and during the night.

As concerns night work, the agreement defines night as a period of at least 9 hours, instead of 8 hours starting not later than midnight and ending not earlier than 5 am. In that sense the agreement complements Directive 94/33/EC and provides for more protective measures for young people as regards the definition of night period and consequently the prohibition of night work under the age of 18.

Table 5: Minimum age¹³²

¹²⁹ Directive 93/103/EC and Directive 92/29/EEC

¹³⁰ According to the ICF study national authorities in DE are discussing the notion of “plenary jurisdiction”, as Germany has an international shipping register which falls under the plenary jurisdiction of the Member State, but allows for the application of different labour legislation.

¹³¹ According to the information provided for the ICF study, these Member States have different regulations for the Flag State or for the vessel owner registry.

EU acquis¹³³	Agreement	MS having equal or more favourable standards	MS having less favourable standards or no standards
Minimum age 16, 15 under certain conditions when in context vocational training	Minimum age 16, 15 under certain conditions and in context vocational training	DE, DK, EE, ES, FI, FR, IT, LT, LV, PL and UK	EL and SE provide for exemptions for occasional work for family members
Night work forbidden for under 18. Only allowed in context of training when supervised Night defined as 8 hours either between 10 pm and 6 am or 11 pm and 7 am	Night work forbidden for under 18. Only allowed in context of training when supervised Night defined 9 hours starting not later than midnight and ending not earlier than 5 am	DE, DK, ES, FI, FR, IT, LT, LV, PL and UK	BE, EE, EL, HR ¹³⁴ , IE, NL, PT ¹³⁵ , SE and SI

Medical certificate

Articles 10-12 of the ILO Convention introduce the obligation for all fishermen to have a medical certificate before being admitted to work on a fishing vessel. The ILO Convention provides for some flexibility as Member States could limit the obligation of a medical certificate to workers working on a vessel of 24 meters and over or vessels remaining at sea for more than 3 days. Article 11 states that the Member State can provide for rules with regard to the nature and content of the certificate and other administrative requirements. Article 12 delimits the examination required (eyesight and hearing) and the fact that the certificate has to state that the fisherman does not suffer from any condition which would be aggravated by working at sea or which would endanger the safety and health of the persons working on board the vessel. The agreement, in its article 7-9, provides for the same as the aforementioned provisions of ILO Convention C.188. Hence Member States can limit the obligation of a medical certificate to workers working on a vessel of 24 meters or over or vessels remaining at sea for more than three days.

On the other hand, the existing EU OSH directives do not contain a similar obligation regarding medical certificates. Article 14 of Directive 89/391/EEC¹³⁶ on occupational safety and health contains a general requirement for the Member States to implement measures

¹³² ICF study p. 70

¹³³ Directive 94/33/EC on the protection of young people at work

¹³⁴ These countries do not refer to specific safety and health conditions when granting exceptions.

¹³⁵ PT: night work also permitted for light work, not only for training purposes

¹³⁶ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1–8

whereby health surveillance at regular intervals should be made available for workers who wish to receive such health surveillance. The measures regarding health surveillance apply to employed fishermen.

In 13 Member States¹³⁷, medical certificates are already compulsory for all seafarers, including fishermen, irrespective of the time spent at sea or the type of the vessel. Portugal exempts small fishing vessels from this obligation. In some Member States, such as Ireland, Italy and Sweden the medical certificate includes fewer checks than the ones required by the agreement. The United Kingdom's legislation contains a medical certificate for seafarers, but fishermen are at the moment excluded. Slovenia does not have any specific occupational safety and health legislation in place for fishermen. A general medical examination for all workers exists, but there are no specific rules for fishermen.

¹³⁷ BE, DE, EE, EL, ES, FI, FR, HR, LT, LV, NL, PL and PT

Table 6 Medical Certificate¹³⁸

EU acquis	Agreement	MS having equal or more favourable standards	MS having less favourable standards or no standards
<p>Member States have to introduce health surveillance measures</p> <p>Each worker may receive health surveillance at regular intervals, possibly as part of a national health system</p>	<p>Medical certificate is obligatory for workers on vessels of 24 meters and over. MS may extend this to vessels under 24 meters. Eyesight and hearing and any conditions which make them unfit or will be aggravated by work at sea</p>	<p>BE, DE, EE, EL, ES, FI, FR, HR, LT, LV¹³⁹, NL, PL and PT¹⁴⁰</p>	<p>IE and IT¹⁴¹, RO¹⁴², SE, SI, and UK¹⁴³</p>

4.3.3. Working time

Working time

The provisions on working time are laid down in Article 13 paragraph 2 of the ILO Convention C.188. They apply to all vessels, regardless of their size, which are for more than three days at sea. They establish limits on hours of rest and hours of work for the purpose of the protection of safety and health of workers and for limiting fatigue. In emergency situations such as the immediate safety of the vessel, or giving assistance to other vessels, the skipper might temporarily suspend the schedule of hours of rest until the normal situation is restored. After the normal situation is restored, the skipper must schedule a rest period for the fishermen who worked their rest period.¹⁴⁴

Within EU law, Article 21 of the general Working Time Directive¹⁴⁵ which lays down certain minimum requirements to protect the health and safety of workers applies to fishermen.

¹³⁸ ICF study p.71-72

¹³⁹ LV seems to have a medical certificate for fisherman in place, but the national authorities supplying information in the context of the ICF study estimate that they would need to do some moderate changes to the national legislation to comply with the agreement.

¹⁴⁰ PT: exemption small vessels.

¹⁴¹ These Member States do not provide for all checks prescribed by the agreement.

¹⁴² Romanian Labour Law seems to contain a general obligation for all employees to have a medical certificate. http://knowledge.leglobal.org/wp-content/uploads/LEGlobal_Memo_Romania.pdf

¹⁴³ No certificate for fishermen

¹⁴⁴ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

¹⁴⁵ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19

Member States must ensure adequate rest and that the average working week amounts to a maximum of 48 hours calculated over a 12 month reference period. For the safety and health protection of workers limits on the hours of work and rest must be established. Exceptions to the rules may be permitted by Member States. These must as far as possible comply with the limits laid down in the Directive but may take account of more frequent or longer leave periods or granting compensatory leave. Like the ILO rules the EU provisions give the skipper of the vessel the right to suspend the normal schedule in emergency situations.

The Agreement lays down similar provisions and limits to hours of work and rest that are similar to Article 21 of the general Working Time Directive. It adds that the limits to working time and hours of rest are not only laid down for the safety and health of workers, but also for the purposes of limiting fatigue caused by long irregular working hours, which would occur often on fishing vessels. Alternative requirements are possible, but they should be substantially equivalent to the provisions of the agreement and shall not jeopardize the safety and health of fishermen.

At national level, 16 Member States¹⁴⁶ comply with the provisions of the Agreement. According to the information received by the national authorities, two Member States, Spain and Portugal will need to implement rules relating to compensatory rest and introduce a definition of fatigue. No information was received from the Romanian national authorities; a 2003 ILO report indicates that Romania has no specific working time rules for fishermen; the working time rules for shore workers and a decree for vessels seem to apply to fishermen¹⁴⁷. The Swedish authorities indicated that they will need to change their working time legislation, but did not provide any further details¹⁴⁸.

Table 7 Working Time¹⁴⁹

EU acquis	Agreement	MS¹⁵⁰ having equal or more favourable standards	MS having less favourable standards or no standards in this area
- Average working week of 48 hrs over a 12 month reference period	Average working week of 48 hrs over a 12 month reference period	BE, DE, DK, EE, EL, FI, FR, HR, IE, IT, LT, LV, NL, PL, SI and UK	ES, PT ¹⁵¹ , RO and SE
- Maximum work hours 10 hours per 24 hours	- Maximum work hours 10 hours per 24 hours		
- 72 hours within	- 72 hours		

¹⁴⁶ BE, DE, DK, EE, EL, FI, FR, HR, IE, IT, LT, LV, NL, PL, SI and UK

¹⁴⁷ <http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/rep-v-1.pdf>, p. 70

¹⁴⁸ ICF Study, p.75

¹⁴⁹ ICF study p. 75

¹⁵⁰ No information on this issue received from: BG, MT, and CY.

¹⁵¹ Minor changes to introduce notion of fatigue.

a seven day period	within a seven day period		
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4.3.4. Fisherman's work agreement

Articles 16-20 and Annex II of the ILO Convention C.188 provide for the obligation of the fishing vessel owner for every fisherman/worker on all vessels to have a written fisher's work agreement that is comprehensible to them and provides them with decent living and working conditions. Annex II contains provisions concerning the content of a fisher's work agreement which, except for the name of both employer and employee, also needs to contain clauses concerning, among others, the capacity the fisherman is going to work in, the number of voyages for which the fishermen is hired, the place of joining the ship, wage, paid annual leave, social security, including the compensation in case of sickness, injuries or death, medical coverage, as well as the right to repatriation. The fisherman needs to have time to review and seek advice concerning his agreement before it is concluded and the agreement needs to be carried on board of the vessel¹⁵².

Articles 14-18 and Annex I of the Agreement contain identical provisions concerning the fisherman's working agreement.

Directive 91/533/EEC¹⁵³ establishes the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. This Directive contains the obligation for employers to provide the employee with a written contract of employment containing the essential elements such as name of the parties, wages, duration of the contract, length of working week, function of the employee and tasks. The differences between the agreement and the current *acquis* are mainly the parts of the agreement which are specific for the sea fisheries sector, such as the place where the fisherman needs to embark, the voyage or number of voyages the fisherman is engaged for, social security and health coverage and protection in case of injury, sickness or death. In addition, the Agreement clearly specifies that a fishermen needs to have time to review and seek advice concerning his agreement before it is concluded. Finally, the agreement indicates that it is the responsibility of the fishing vessel owner to ensure that each fisherman on board has a written agreement, which ensuring him decent working conditions. The fisherman work agreements have to be carried on board of the vessel.

At national level 10 Member States¹⁵⁴ already comply with the rules set out in the Agreement. In Poland, the fisherman's work agreement has the same requirements as the seafarers'

¹⁵² http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

¹⁵³ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p. 32–35

¹⁵⁴ BE, DE, EE, FI, FR, HR, LV, NL and SE

employment agreement and in addition it must contain provisions on the food board, the provision of working clothes and the individual protective equipment.¹⁵⁵

In Greece and Portugal, the national authorities indicated that the current rules do not comply with all the provisions regarding the content of fisherman's work agreement as set out under Annex I in the Agreement. Along the same line, Ireland finds that current provisions need to be updated and indicates that not all particular statements of Annex I are covered by its national legislation.

In Slovenia, only general rules on work agreements apply to fishermen thus do not provide for the specificities of the sector. Spain does not have an obligation to provide for a written work agreement thus does not comply with the compulsory information set out in the Annex I. Also the United Kingdom does not set out any provisions defining the fishermen's work agreement nor the particular information as set out in Annex I.

The obligation to carry the work agreement on board the vessel is complied with by the majority of Member States, with the exception of Ireland, Portugal, Spain and United Kingdom.

Latvia and Slovenia have general provisions in place that specify that the work agreement shall be carried by the employer but do not specifically refer to the sector. This may mean that these countries need to provide for more sector specific legislation.

In conclusion, in 10 countries no additional requirements are needed. There are 4 countries that do not comply with the requirements of the Agreement and thus a new standard of the format of the fisherman's work agreement would have to be issued. Only currently Spain does not impose any written agreements, thus requiring more significant changes to the national system. For 2 countries, only minor changes are expected as these relate to some of the clauses entailed in written agreements. This only requires a change in the way agreements are written (higher administration efforts). For 7 countries, no information from the national authorities was received.¹⁵⁶

Table 8 Fisherman's Work Agreement

EU acquis	Agreement	MS¹⁵⁷ having equal or more favourable standards	MS having less favourable standards or no standards
- General provisions for all sectors concerning a written agreement in	- Written fisherman's work agreement containing all details	BE, DE, EE, FI, FR, HR, LT, NL,	SI and LV ¹⁵⁸ , IE, PT, ES, EL ¹⁵⁹ , UK ¹⁶⁰ and RO ¹⁶¹

¹⁵⁵ Ustawa z dnia 5 sierpnia 2015 r. o pracy na morzu, Dz.U. 2015 poz. 1569 published 9/10/2015, www.isip.sejm.gov.pl

¹⁵⁶ ICF study, p.76

¹⁵⁷ No information received from BG, MT, CY, LT, PL

¹⁵⁸ No sector specific provisions

¹⁵⁹ EL: According to the ICF study, table 7 self-employed without personnel make up 80% of the total employment. Only workers would have to comply with the agreement, so this is likely an overestimate.

<p>which essential details concerning the name of the parties, the function, wages, start and if applicable end date of the contract.</p>	<p>provided for in Annex 1, which includes sector specific details such as name of the vessel, health care and protection against disability injury, and sickness, number of voyages.</p> <ul style="list-style-type: none"> - employee has the time to review and seek advice before concluding the agreement - fisherman's work agreement has to be carried on board of the vessel. 	<p>PL, and SE</p>	
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4.3.5. Repatriation

Repatriation is a right for fishermen whose employment agreement has expired or is terminated for justified reasons or the fishermen can no longer carry out the duties required. The fishing vessel owner has to pay for the repatriation of the fishermen to the country of origin. If the fishing vessel owner fails to provide for repatriation, this obligation falls on the Member State.

The ILO Convention C.188 provides for a right of repatriation when a fishing vessel enters a foreign port. The provisions in the Agreement are based on the ILO Convention. There is no current EU acquis concerning repatriation for fishermen. Directive 2009/13/EC¹⁶² solely contains a provision on repatriation for seafarers in the merchant navy, but it does not apply to sea fishermen.

Some Member States have already extended the repatriation rights for seafarers to sea fishermen¹⁶³. Some Member States, like Belgium, have created a special fund to cover the

¹⁶⁰ EL, IE, PT, ES, and UK: According to the information received by the national authorities, the national legislation does not contain the obligation to carry the fisherman's work agreement on board of the vessel. ES's national legislation does not contain any provision concerning a written fisherman's work agreement.

¹⁶¹ Title II of the Romanian Labour Code on individual employment contracts complies with the content of the employment contract required by Directive 91/533/EC. It also includes a provision on employee seeking advice of third parties before concluding the contract. <http://www.codulmuncii.ro/en/title-2/page-1>. There seems no specific legislation on employment contracts for fishermen.

¹⁶² 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. 30–50

¹⁶³ ICF Study section 3.3.2.7

funds of repatriation. Some Member States like Bulgaria¹⁶⁴ and Croatia might not have a statutory right of repatriation because their sea fisheries sector fishes in coastal waters, so that the fishing vessels do not reach or enter foreign ports.

¹⁶⁴ European Parliament Note Fisheries in Bulgaria, 2001, p. 31
[http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460049/IPOL-PECH_NT\(2011\)460049_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/460049/IPOL-PECH_NT(2011)460049_EN.pdf)

Table 9 repatriation

EU acquis	Agreement	MS ¹⁶⁵ having equal or more favourable standards	MS having less favourable standards or no standards
No EU acquis	Right of the fishermen to be repatriated from a foreign port to the country of origin in case their contract is expired or terminated.	BE, DE, EE, FI, FR, LV, NL, PL, PT, SE, SI and UK ¹⁶⁶	BG, ES ¹⁶⁷ , HR ¹⁶⁸ , IE ¹⁶⁹ , IT ¹⁷⁰ , LT ¹⁷¹

4.3.6. Food and water on board

Article 25 of ILO C.188 provides that food carried and served on board be of a sufficient nutritional value, quality and quantity. Potable water must be of sufficient quality and quantity. This is an important requirement given the high incidence of occupational diseases in the sector (see section 1.2), both in terms of quality and quantity. As the fishermen are at sea several days or even weeks, they are dependent on the food and water provided on board. Food and water shall be provided by the fishing vessel owner at no cost to the fishermen. This cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides. Article 24 of the agreement contains a similar provision. This provision applies to all vessels. There is no similar provision in the current EU acquis¹⁷². In addition, annex II of the agreement contains specific technical requirements on food storage, conservation, food preparation, and kitchen utensils. These requirements will apply to vessels for which the building or major conversion contract has been placed on or after the date of the entry into force of this agreement (See Annex 6).

¹⁶⁵ No information received: BG, MT, CY, PL, RO

¹⁶⁶ In the context of the ICF study, the UK national authorities indicated that they intend to provide general protection on repatriation also for self-employed fishermen as per the ILO Convention C.188

¹⁶⁷ Repatriation right exists, but only for fishermen registered under the Spanish social security legislation and sailing on a fishing vessel flying under Spanish flag.

¹⁶⁸ According to the information received from the national authorities in the context of the ICF study, the Croatian fishing fleets sails in coastal waters, so the repatriation clause would not be applicable. The Bulgarian fishing fleet is also concentrated on its Black Sea coastal zone, see footnote 116

¹⁶⁹ Irish national authorities indicated in the context of the ICF study that the legislation needs to be updated.

¹⁷⁰ In the context of the ICF study the national authorities indicated that there was no national legislation regarding the repatriation of fishermen.

¹⁷¹ Analysis done by the ministry for social affairs in Lithuania, www.socmin.lt/download/.../analize_tdo%20konvencija%20188_bendra.doc

¹⁷² Directive 93/103/EC does contain some provisions on food, but not to this level of detail. It contains the requirement for cooking and domestic appliances using heavy gases to be used only in well ventilated spaces with care being taken to avoid dangerous accumulation of gas. (Annex I, point 2.9 and Annex II, point 2.9

Ten Member States already have this provision in their national legislation. In five Member States minor changes are expected to add to the general standard of healthy and safe living conditions on board as already applicable through the result of Directive 93/103/EC, the specific aspect of food and quality of food and water.

Table 10 Food and water on board

EU acquis	Agreement	MS having equal or more favourable standards	MS having less favourable standards or no standards
No EU acquis	<p>The food carried and served on board must be of a sufficient nutritional value, quality and quantity.</p> <p>Potable water must be of sufficient quality and quantity. The food and water shall be provided by the fishing vessel owner at no cost to the fisherman;</p>	DE, DK, EE, FI, FR, IT, LV, SE, SI, and UK	BE, ES ¹⁷³ IE, HR, NL ¹⁷⁴ , and PT

4.3.7. *Right to medical treatment on board and ashore*

Medical treatment on board and ashore is an important right in a sector where there is a great risk to injuries and accidents on board of vessels. This is illustrated among others by a study done on 187 medical treated injuries on board fishing vessels. Medical treatment ashore was delayed for more than 24 hours in 35% of the injuries.¹⁷⁵

Directive 92/29/EC¹⁷⁶ sets out standards for medical equipment on board as well as for on board medical consultation by radio, which imply a right to medical care on board the vessel; the agreement however adds a requirement of satellite communication to be made available to the workers in this context and the right to medical care on shore (nearest port which can also be outside the country normally responsible of the fisherman's social security). A right to medical treatment ashore is not yet been provided for in the EU acquis.

¹⁷³ These Member States only cover this right implicitly in their legislation

¹⁷⁴ Right is explicitly covered but for fisheries only if stated in the work agreement

¹⁷⁵ Jensen OC1, Christensen S, Larsen S, Soerensen L., Occupational injuries among fishermen, Bull Inst Marit Trop Med Gdynia. 1996;47(1-4):11-8.

¹⁷⁶ Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, OJ L 113, 30.4.1992, p. 19–36

The ILO Convention C.188 contains a right for fishermen to receive medical treatment ashore as well as to be taken ashore for medical treatment in a timely manner in case of serious injury or disease (Article 29(e) of the Convention). The Agreement contains a similar provision in Article 26(a).

At national level, 12 Member States¹⁷⁷ already have provisions in place concerning medical treatment abroad and ashore in accordance with the Agreement. 5 Member States¹⁷⁸ have indicated that they do not fully comply with the provisions.

Table 11: Medical treatment on board and ashore

EU acquis	Agreement	MS ¹⁷⁹ having equal or more favourable standards	MS having less favourable standards or no standards
Workers on board must be granted access to medical consultation by radio to facilitate assistance in case of injury or emergency ¹⁸⁰ .	Right for free medical treatment on board and abroad. Satellite communication needs to be made available.	BE, DE, EE, EL, FI, FR, HR, LT, NL, PL, PT, SE, UK	ES ¹⁸¹ , IE, IT, LV, SI ¹⁸²
No similar provision in the EU acquis	Right to have treatment ashore or to be transported to the shore in a timely manner to receive medical treatment.	BE, DE, DK, EE, EL, FI, FR, HR ¹⁸³ , NL, LT ¹⁸⁴ SE and the UK	IE, IT, LV, PT, and SI ¹⁸⁵

4.3.8. Protection in case of work-related injury sickness and death

Articles 38 and 39 of the ILO Convention C.188 contain provisions to ensure that in case of a work-related injury, or sickness, the fishermen shall have the right to appropriate medical care. Also, in case of work-related disease, injury or death, the fisherman or his descendants have the right to compensation. If the national social security system does not provide for it,

¹⁷⁷ BE, DE, DK, EE, EL, FI, FR, HR, NL, LT, SE and the UK

¹⁷⁸ IE, IT, LV, PT and SI

¹⁷⁹ No information was received in the context of the ICF study from BG, CY, ES, MT, PL, RO, and SI

¹⁸⁰ Directive 92/29/EEC, this Directive also contains provisions on the type and quantity of medicaments on board to be used on board if necessary.

¹⁸¹ ES: No clear information was received in the context of the ICF study, p.79.

¹⁸² Only general provisions applicable to all workers on access to medical care.

¹⁸³ In the context of the ICF study the Croatian national authorities indicated that in their view the national legislation complies with the provisions of the Agreement.

¹⁸⁴ Source: www.socmin.lt/download/.../analyze_tdo%20konvencija%20188_bendra.doc

¹⁸⁵ SI has a fleet which predominantly is composed of small scale fishing in coastal waters. Hence this fleet is not expected to land at foreign port and not to stay at sea for a prolonged period of time. https://stecf.jrc.ec.europa.eu/documents/43805/1034590/2015-07_STECF+15-07+-+AER+2015_JRC97371.pdf

the fishing vessel owner is responsible for the protection and medical care of a fishermen while on board of the vessel or in a foreign port until he is repatriated. This liability might be covered via a system for fishing vessel owner's liability or a national compulsory insurance or other scheme¹⁸⁶.

The Agreement provides is to the extent consistent with national legislation, medical care shall be provided free of charge on board and abroad. The fishing vessel owner shall pay the costs in case the social security system does not cover it. It leaves it for Member States to decide about the rights ensured under their national social security system and about the height of benefits

The EU acquis provides for a coordination of social security¹⁸⁷. These rules ensure that citizens making use of their right of free movement will be insured the social security system of one Member State. The same goes for sea fishermen who reside in one country and are employed on vessels flying the flag of another Member State. As said above, the EU rules do not determine the right to a social security benefit such as the right to medical care abroad or in case of occupational injury or accident. The height of the benefit is also determined by the Member States themselves.

12 Member States¹⁸⁸ seem to comply with the provisions in the agreement. Latvia and Spain estimate that some additional provisions need to be implemented, but did not specify this further in the context of the study. For Ireland, Italy and Croatia the information received in the context of the external study¹⁸⁹ did not allow to make estimations on gap between the national legislation and the agreement.

Table 12 Right to compensation in case of occupational injury, sickness, or death

EU acquis	Agreement	MS ¹⁹⁰ having equal or more favourable standards	MS having less favourable standards or no standards in this area
	<p>Right to compensation in case of occupational injury, sickness or death in so far as it is consistent with the national social security system.</p> <p>Ship-owners to pay the costs if social security system does not</p>	<p>BE, DE, DK EE, EL, FI, FR, LT, NL, PT, SE and UK</p>	<p>ES, IE, IT and LV</p>

¹⁸⁶ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

¹⁸⁷ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), OJ L 166, 30.4.2004, p. 1–123

¹⁸⁸ BE, DE, DK EE, EL, FI, , LT, NL, PT, SE and UK

¹⁸⁹ ICF study p. 80

¹⁹⁰ EE, ES, HR, IE, IT, LT, MT, PL, RO and SI

	cover it.		
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4.3.9. Occupational safety and health: risk assessment

In the context of occupational safety and health, Article 33 of the ILO Convention C.188 provides that risk evaluation shall be conducted, as appropriate, with the participation of fishers or their representatives.¹⁹¹ The Agreement contains an identical obligation in its Article 36.

Directive 89/391/EEC¹⁹² contains an obligation on the employer to carry out a risk assessment and be in the possession of the respective documentation¹⁹³. Employers shall consult workers or their representatives and allow them to take part in discussions on all questions relating to health and safety at work¹⁹⁴. A similar obligation on information and consultation of employees exists in Directive 93/103/EC on the safety and health requirements in the sea fishing sector¹⁹⁵.

As all Member States have transposed both Directives in their national legislation, most Member States¹⁹⁶ estimate that only minor adjustments have to be made to allow workers to participate in the risk assessment.

Table 13: Risk assessment

EU acquis	Agreement	MS¹⁹⁷ having equal or more favourable standards	MS having less favourable standards or no standards in this area
Workers or their representatives must be consulted on occupational safety and health matters.	If appropriate workers or their representatives shall participate in the risk evaluation.	DE, DK, FR, IT, LT, SE and UK	EE, EL, FI, HR ¹⁹⁸ , IE, LV, NL, PT and SI

¹⁹¹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO

¹⁹² Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1–8.

¹⁹³ Article 6(3) a and 9(1) a of Directive 89/391/EEC

¹⁹⁴ Article 11 of Directive 89/391/EEC

¹⁹⁵ Article 11 of Directive on Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 307, 13.12.1993, p. 1–17

¹⁹⁶ In the context of the ICF report DE, DK, FR, IT, SE and UK indicated that their national provisions on the risk assessment carried out with participation of fishermen or their representative comply with the Agreement. EE, EL, HR, FI, IE, LV, NL, PT and SI indicated that information and consultation rights are in place with regard to risk assessment, ICF study p.80-81

¹⁹⁷ In the context of the ICF study no information was received from, BE, BG, CY, LT, MT, PL, RO and SI, p. 81.

¹⁹⁸ Probably minor adjustments.

5. WHAT ARE THE IMPACTS AND WHO WILL BE AFFECTED?

5.1. Background

This section will look at the likely economic and social impacts of the agreement. In addition it will look at the impacts on competitiveness and on SMEs. There are no environmental aspects to be expected from the agreement. It will describe who will be affected. In this context companies, fishermen, national administrations, consumers and possibly third countries will be affected¹⁹⁹ as sea fishing has a third country aspect in the context of the Common Fisheries Policy.

The unit of analysis used to estimate the population is represented by the number of stakeholders which are affected by each article of the agreement. The estimation of the affected population was based as much as possible on EU level statistics or data collected at national level. In accordance with the applicability of the agreement workers, self-employed working alongside workers on the same vessels²⁰⁰, were included in the analysis²⁰¹. Self-employed workers not working alongside workers were excluded from all calculations, since they are not covered by the provisions of the Agreement). No data is available on employment per vessel. Given that precise data identifying relevant populations were not directly available for all aspects of the agreement assumptions were needed to produce estimates. For the calculations over a 5 year period were made. Calculations were based on a low, best and high estimate. These figures are presented in section 5.2 and further.

For each Article of the Agreement, the size of the affected population depends on the existing legislative framework at national level. In order to obtain comparable figures in the context of the external study, EU level datasets, triangulated with national datasets and information from interviews have also been used as in many cases there is not clear and reliable data on the affected population. To approximate the population affected by articles of the Agreement mainly secondary data appearing in the Annual Economic Report (AER) 2014 under the following reference Scientific, Technical and Economic Committee for Fisheries (STECF) "The 2014 Annual Economic Report on the EU fishing Fleet (STECF 14-16)", 2014., EU-LFS and EU-LFS ad-hoc modules data have been used. A sensitivity analysis has been conducted as part of the quantitative analysis (see Annex 2).

The detailed comparison of the options developed in section 4 assists in identifying the types of impacts and reasons for those impacts associated with the articles of the Agreement. This analysis is therefore taken into account when assessing quantifiable and non-quantifiable costs and benefits of the Agreement²⁰².

Particular attention will be paid in this section to the consequences in Spain, Italy, Portugal, Greece, the Netherlands, Poland and the United Kingdom as these countries make up 84% of the sector in total employment terms and 87% in terms of FTE within the EU (See Annex 5).

¹⁹⁹ http://ec.europa.eu/smart-regulation/guidelines/tool_8_en.htm

²⁰⁰ As said in section 4.3.1, The agreement is extended to self-employed, whenever there is a link (direct or indirect) to the protection of the health and safety of employed workers on the same vessel

²⁰¹ The proxy used for the category of self-employed working alongside workers was the EU-LFS category 'self-employed with employee' (see box 1). It is acknowledged that this is only an approximating of the relevant category of worker, but no other proxy was available. The self-employed excluded are captured by the EU-LFS category 'self-employed without employees' (see box 1). Again, this is the only available approximation of the relevant category.

²⁰² See annex 2 for details on the methodology used to quantify costs and benefits

France will not be impacted by the agreement as they have ratified the ILO Convention itself in October 2015. The Estonian national authorities submitted the law to ratify the ILO Convention to the national Parliament in November 2015. Therefore it is assumed that the agreement will have no impact on Estonia²⁰³, as their national legislation will be compliant with the ILO Convention. DK, NL, and UK are preparing for ratification. It could be assumed that ratification in these countries will take place in 2016-2017.

The agreement contains minimum standards. It contains also more favourable provisions and a non-regression clause. As a consequence, Member States are allowed to maintain or introduce more favourable legislation on the subjects addressed by the agreement. Therefore, the agreement will have no direct impact on the situation in Member States that already have equal or more favourable provisions than the agreement. It will have an impact on Member States that have no or less favourable provisions, than the minimum requirements set out by the agreement, in their national legislation.

In addition, the agreement contains some clauses to allow for its progressive implementation in national law in a period of 5 years for cases where the implementation of the agreement would entail substantial problems for limited categories of fishermen or vessels. If a Member State wishes to use this possibility of progressive implementation, the national social partners in the sector need to be consulted.

Only the provisions of the agreement which are likely to add significantly to existing international and already transposed EU legal acquis have been assessed. This means that a number of articles have not been considered for an assessment of quantitative and qualitative impact, either because they are already covered by the existing international or EU legal acquis, because they provide significant leeway for national interpretation and/or because they only add some further specification in relation to existing provisions at the margins. These concern the provisions on manning requirements, minimum age, crew list and private labour market services.

5.2. Impact on the Member States

As a result of the analysis in Section 4, it can be concluded that out of the 23 Member States that have a sea fishing sector Belgium, Estonia, Denmark, France, Finland, and Germany do not need to make amendments to comply with the provisions of the agreement, as their national rules are already equivalent or more favourable than the agreement. For Croatia, Greece, Lithuania, the Netherlands, Poland, Romania and Sweden only minor amendments to national provisions are needed. Thus in total 13 countries out of 23 Member States do not need to make any major changes to implement the Agreement. No major implementation challenges are therefore expected for these Member States. For three Member States (Bulgaria, Cyprus, Malta) no assessment was possible due to the fact that no information was supplied by these Member States in the context of the external studies.

This means seven Member States still need to streamline their national legislation. For Spain, Portugal, Ireland Latvia, and Italy, Slovenia and the UK amendments to legislation will be necessary. Some amendments will be minor such as the obligation to carry the fisherman's

²⁰³[http://www.riigikogu.ee/tegevus/eelnoud/eelnou/c3837e93-26b4-47c0-a842-f5770f817a57/Rahvusvahelise%20T%C3%B6C3%B6rganisatsiooni%20kalandust%C3%B6C3%B6%20koiventsooni%20\(nr%20188\)%20ratifitseerimise%20seadus/](http://www.riigikogu.ee/tegevus/eelnoud/eelnou/c3837e93-26b4-47c0-a842-f5770f817a57/Rahvusvahelise%20T%C3%B6C3%B6rganisatsiooni%20kalandust%C3%B6C3%B6%20koiventsooni%20(nr%20188)%20ratifitseerimise%20seadus/)

work agreement on board of the vessel²⁰⁴, or the introduction of certain additional health checks to obtain the medical certificate²⁰⁵. For the UK, the implementation of the medical certificate may need significant changes. For Spain, the introduction of a written work agreement will lead to changes. The right of repatriation needs to be introduced in Italy. Slovenia needs to introduce sector specific legislation but this may not have in practice a strong impact due to similar general labour law provisions. While these changes are more significant, no specific implementation challenges are expected. Most Member States, concerned already have similar provisions in their national legislation for seafarers. Hence it would be a case of extending this legislation to sea fishermen.

In terms of level playing field, even if Member States will retain some flexibility, the scope for divergence is narrower than presently as the same standards will apply to all of them. For example all Member States will need to introduce an obligation for fishermen to have a medical certificate before allowing fishermen to work on board. They could be more or less prescriptive regarding the medical examination required (although some essential checks are prescribed by the agreement).

As a result of the agreement, Member States benefit from a decrease in occupational illnesses, injuries and workplace accidents through lower social security costs. Out of those, only the impact linked to the reduction in hospital admissions could be quantified. The decrease was estimated to be €70,000 per year for illnesses and €100,000 for accidents. The largest decreases in hospital spending for accidents was estimated to be in the United Kingdom, Portugal, Spain, Ireland and Italy (all estimated to save over €10,000 per year), with the United Kingdom, Spain and Portugal also saving over €10,000 per year from the reduction in illnesses. For the national enforcement authorities, it would support the enforcement of obligations stemming from the national labour law.

The benefits to national authorities will also persist beyond the full five year period analysed, with the total benefit estimated to be over €0.8-€1.5 million for illnesses and accidents. for that 5 year period²⁰⁶.

For the other provisions of the agreement, the impact of the agreement on public authorities is also likely to be limited, as in most cases enforcement mechanisms exist. Having one legal framework for the living and working conditions for fishermen, might facilitate the enforcement of the living and working conditions. It will also lead to more attention being given to the working conditions on board. In addition, it would foster coordination by the different enforcement authorities. Beyond the quantified impacts on health care systems, further impacts on benefits or disability schemes are likely to be minimal as there is unlikely to be a significant (negative) employment effect which may lead to further calls on the benefit system.

5.3. Impact on workers

The Agreement aims to introduce certain provisions (medical certificate, working time, occupational safety and health provisions on food and water, accommodation, equipment,

²⁰⁴ This is a minor adjustment for IE, PT, ES, and UK

²⁰⁵ IT and IE

²⁰⁶ ICF study, p. 115

medical treatment on board, and risk assessments) which, if complied with, would reduce the safety and health risks for workers in this sector. It would improve working conditions, in particular occupational safety and health. In addition, the introduction of a written fisherman's work agreement and a right to repatriation would improve legal certainty. It would lead to less risk of undeclared work and of abandonment of fishermen in a foreign port.

In terms of positive impacts with regard to better health outcomes and improved well-being (and an associated greater likelihood to be able to work in the sector for longer), provisions on working time and medical certificates are most likely to show some positive impact. Such an impact would occur, in particular in those Member States that need to make some changes to their legislation such as Ireland, Italy, Spain, Romania and United Kingdom. In particular, the United Kingdom would need to introduce legislation on medical certificates.

It is being assumed that the medical certificate would lead to a reduction of workplace accidents and occupational illnesses. As no base line data could be found on the impact of legislation on accidents and illnesses, the assumption of a 5% reduction rates was made.²⁰⁷ Using information on illnesses and accidents from the EU-LFS, the analysis estimated that the introduction of the legislation would result in 200 fewer workplace accidents and 130 fewer occupational illnesses per year in the 20 Member States have been analysed.

Involvement of the fishermen themselves or their representatives in risk assessment will encourage the discussion of risks and preventative measures and might foster a culture of prevention which is currently lacking in the sector. This will encourage the further improvement of working conditions on board²⁰⁸

The reduction in workplace accidents and occupational illnesses would persist over the full five year period analysed. In total in the 20 Member States, it was estimated that over the five year²⁰⁹ period between 1,000-2,000 workplace accidents and between 700-1,300 episodes of occupational illness would be avoided.

5.4. Impact on employers

Changes in expenditure

One off costs

²⁰⁷ A scenario analysis was made. In the external study the assumption was being made that where a Member State has to alter their approach to managing health and safety following the introduction of new legislation, the Member State will experience a reduction in the number of workplace accidents and occupational health conditions of 5% (taking account of research that accident risk doubles after 12 working hours). This 5% reduction has been adjusted depending on how far away from the agreement current Member State legislation is. (ICF study, p. 96).

²⁰⁸ Report From The Commission to The Council, The European Parliament, The European Economic and Social Committee and The Committee of The Regions on the practical implementation of Health and Safety at Work Directives 93/103/EC, COM(2009)599 final(fishing vessels) and 92/29/EEC (medical treatment on board vessels)

²⁰⁹ Given the nature of the external study, the timeframe used to assess the baseline costs, should in principle reflect the numbers of years required for the full health impacts to come into effect. This, would require reliable information on the period of latency of certain illnesses such as musculoskeletal disorders or other illnesses prevalent in this sector, which was generally lacking. Therefore a reasonable timeframe was used, which was considered to be five years; as a longer period would increase the uncertainty of the estimates.

It is likely that there will be costs to employers to implement the requirements detailed in the Agreement, some of these likely to be both one off costs. For example drafting or amending fisherman's works agreements to meet the new standards and storing copies on board of the vessel. Employers in the six Member States²¹⁰ will be the most impacted. The average labour cost in the sector for these countries is estimated between 8 and 17 euro per hour²¹¹. In order to draft or amend a workers agreement and store it on board the vessel. It is assumed that an administrator would spend 2 hours per worker (see sensitivity analysis in Annex 2), i.e. 16-34 euro per worker to draft or amend the agreement and make sure it is on board the ship. To ensure that the agreements are carried on board, the additional costs would be one hour per worker. Taking into account the number of workers involved in this sector in the Member States, this would lead to €0.6 million. Taking into account the number of enterprises in the country concerned, this would lead to an average cost of €30 per enterprise²¹². Due to the high number of employed workers in the sector, Spain, and Portugal would be relatively more impacted.

Other costs involve the training to make skippers of the vessel and the crew familiar with their rights and obligations under the agreement which is estimated at €1.7 million euro. This training is not an obligation provided for in the agreement, but seems logical. The experience with a similar agreement in the maritime sector shows that EU and national social partners also provide information and training to workers in the sector. Improving the working conditions and in particular, the occupational health and safety culture among fishermen, demands information and training. Member States indicated previously that they consider that training essential and that it needs to be more adapted to the circumstances of fishermen in terms of level of education, availability, traditions and culture, etc. and should include more practical exercises²¹³. The cost of a training session has been estimated as €15 in the United Kingdom²¹⁴. The number of skippers requiring training has been estimated taking into account the number of vessels that are not run by self-employed individuals with no employees (using information from the LFS), as this article of the Agreement. The cost of paying for training for skippers' was estimated to be €1.7 million. This cost is also a one-off cost, not extending over the five year period. This estimate does not take into account the possibility that national social partners might also be involved in the training and in providing information on the rights and obligations of the agreement. The costs to employers of paying for training and allowing skippers' to attend training is highest in Greece, Croatia and Finland, as larger countries already comply with this aspect of the Agreement. However, this might be overestimated as both Greece and Finland have a high number of self-employed (61% and 71%) who consequently do not fall within the scope of the agreement.

Recurrent costs

²¹⁰ LV, RO and SI will need to adjust their general written agreement to the specific features of the sector. IE, PT, and the UK do have a written sector specific agreement, but their national legislation does not contain the obligation to carry the fisherman's work agreement on board the vessel. ES does not seem to have written agreement for fishermen.

²¹¹ See Annex 2

²¹² This is an estimate as the employment per enterprise is not known.

²¹³ Report From The Commission to The Council, The European Parliament, The European Economic and Social Committee and The Committee of The Regions on the practical implementation of Health and Safety at Work Directives 93/103/EC, COM(2009)599 final(fishing vessels) and 92/29/EEC (medical treatment on board vessels)

²¹⁴ See Annex 2. This value has been adjusted using exchange rates and PPP values to give country specific values.

Recurrent costs would be related to the provision of food and water, medical certificates, covering the cost of repatriation, medical treatment on board and ashore, risk assessment).

The provision of food and water of sufficient quality and quantity will be recurrent costs. The costs will depend on the number of crew on board and the time spent at sea. These costs will impact employers with a distant water fleet who remain longer at sea, more than employers of a coastal fleet which returns to shore every day or within a few days. This cost could not be quantified but it is expected not to have a significant impact since ships that stay longer at sea would have to have food and water of sufficient quantity and quality on board for the crew's health and safety.

With regard to *the medical certificate* Italy, Sweden and Ireland need to make some adjustments with regard to the content of the medical examination required, but the medical certificate as such exists. In the United Kingdom authorities indicated in the context of the study that it has no certificate for fishermen, as it has for seafarers. The assumption is being made that the UK would then introduce a medical certificate for all fishermen, which would cost 115 euro per worker. The cost of a certificate is estimated at an average of 300 euro per enterprise. These are recurrent costs as the certificate needs to be renewed every two year. It is possible that in some Member States the national insurance system might reimburse the costs of the medical certificate.

Repatriation rights impact the Member States with a fishing fleet which is active in distant waters have already a right to repatriations. This would mainly bring costs to Italy who does not seem to have a right to repatriation for fishermen. Spain will be impacted to a lesser extent, as a right to repatriation exists. It will need to expand it to fishermen which do not fall under the scope of its national social security system. There is no data on the number of fishermen which falls in to this category²¹⁵.

It is assumed that 1% of illnesses and accidents required repatriation, and the on-off cost of repatriation was €10,000 per repatriation (see Annex 2). Hence the costs per year would be €10.000²¹⁶. This can be considered as a high estimate regarding Spain, where a large part of the fishermen are already covered by the right to repatriation. Italy who currently does not have right for repatriation would be the most impacted.

In the context of the medical treatment on board and ashore, the provision that the vessel owner defers all costs that were not covered under social security if abroad is new. Systems of private insurance for example could ensure that the vessel owner can actually in practice apply the provisions. The Member States most impacted by the provision are Ireland, Italy, Latvia, Portugal and Spain. Sea fisheries' activities in Slovenia are limited to coastal waters and seem to have a part-time and seasonal character, therefore, the impact is considered to be limited.

Risk assessment, the agreement contains a requirement for fishermen or their representatives to take part in risk assessment as appropriate. This is a requirement which has already been introduced by a few Member States²¹⁷ in their legislation. However, for the Member States, where this is not the case, this could imply specific guidance from national (enforcement) authorities and potentially specific training for fishermen or their representative who

²¹⁵ See section 5.1.4.

²¹⁶ ICF study, p. 117

²¹⁷ DE, DK, FR, IT, SE and UK

participate in the risk assessment. In Member States where this requirement already exists, trainings were estimated to cost between 98 and 180 euro per person for training²¹⁸. This would lead to a total cost of 1 million euro. This would be one-off costs due to agreement entering into force. The training might need to be repeated periodically for fishermen entering the profession and for new representatives. In addition, a risk assessment would need to be performed for example whenever new fishers enter into service, new equipment is installed or used, or new work methods are introduced. The cost of carrying out a risk assessment for Member States who do not have the provisions in place is estimated on €0.1 million²¹⁹. Based on an assumption that 10,000 vessels (see Annex 2) would need to be assessed this would come to €10 euro per vessel.

Production gains

The agreement would be expected to lead to production gains resulting from a reduction in the incidence and severity of occupational illnesses and accidents which require workers to take sick leave in this sector. This will lead to a reduced volume of absence due to a reduction in the number of occupational health conditions and accidents.

This benefit has been estimated in monetary terms, using estimates of the duration of absence from an accident or illness (from the EU-LFS), the 5% reduction rate per year and the cost of labour. The benefits to employers will not only materialise during the full five year period analysed but also beyond. The total benefit in terms of reduction in lost productivity from occupational illnesses and accidents for employers for that five year period is estimated to be between €0.8-1.6 million for occupational illnesses and €1.9-3.8 million for accidents²²⁰.

Reduced staff turn-over

A reduction in the number of workplace accidents and occupational health issues will have a positive effect on staff retention. However, no evidence was found which estimated quantitatively the relationship between accidents and occupational health. The reduction in staff turnover would persist every year. Therefore a reduction in staff turnover is likely to have a moderate impact, in particular on the countries that have a large number of employees in the sector, such as Spain, Italy and the United Kingdom.

Reduced insurance fees

Reduced accidents and illnesses rates would lead to reduced insurance fees for employers because of a reduction of claims. However, no evidence was discovered of how much employers in the fishing industry pay for insurance, or how much this would reduce if the new legislation was introduced. Therefore this impact could not be assessed quantitatively. Impact on the national administration

5.5. Impact on employment

The implementation of the agreement is unlikely to impact overall employment opportunities in the sector, with the potential exception of countries where regulations on working time may

²¹⁸ Prices quoted in the UK and DE. See Annex 2.

²¹⁹ ICF study section 129-130

²²⁰ ICF Study, p. 119

lead to the necessity to recruit additional staff. However, this eventually appears limited as the working time limits set on the agreement are the same as the current EU acquis.

As most of the measures foreseen mainly impact employees (rather than self-employed), one might argue that their implementation could have displacement effect with employers preferring to recruit self-employed fishermen rather than issuing contracts of employment. However, since the impact of the agreement is limited, it is not expected that the impact of the Agreement is sufficient to have significant displacement effects of this nature at Member State level²²¹.

5.6. Impact on competitiveness, SMEs and consumers

Nearly 90% of businesses in this sector are micro-businesses with only one vessel. Although no data are available on the average number of employees per vessels, it can be assumed (based on the data on self-employed without employees), that an important share of these are owner operated vessels or vessels operated by a skipped with one or two other self-employed or employees on board.

The Agreement will have no impact on owner operated micro enterprises as its provisions do not apply to them. The impact on small businesses will be limited to those with employees or where self-employed work alongside employees.

The overall quantitative and qualitative impact of the Agreement on businesses is of limited significance, although it presents differences by country. Therefore, while there is inevitably a greater impact on SMEs, it is proportionate of their share in the sector and is unlikely to impact their competitiveness when compared to the situation under existing legislative provisions. In addition, the agreement provides the possibility for Member States to exclude certain categories of fishermen or vessels, if its application raises special problems of a substantial nature in the light of the particular conditions of service or operations of the vessels. For these categories Member States can progressively implement the agreement in these sectors over a period of 5 years. Furthermore, some provisions, like the provision on medical certificates are limited to vessels of 24 meters and over. It is left to the Member States to decide whether or not to extend them to other vessels. Even if Member States will retain some flexibility, the scope for divergence is narrower as the same standards will apply to all of them. For example all Member States will need to introduce an obligation for fishermen to have a medical certificate before allowing fishermen to work on board. They could be more or less prescriptive regarding the medical examination required although some essential checks are prescribed by the agreement.

It therefore unlikely, that the Agreement will have impact negatively the competitiveness or competition in the sector or vis-à-vis vessels of third countries. This impact would be more significant (and potentially beneficial to the EU fishing fleet) if the implementation of the Agreement were to lead to the ratification of the ILO Convention 188 also by countries outside the EU (see section 5.7). Here differences in labour standards are currently seen to have a negative impact on the competitiveness of the EU fleet which could be improved if non-EU countries were required to enforce similar labour standards as are already in place in most EU countries. Due to the EU's strong position in trading of fishing products, this will

²²¹ ICF study, p. 129

promote ratification on third countries. The EU Member States will also have an incentive to promote ratification²²².

Given the limited impact of the agreement on businesses, it would be unlikely that the agreement would lead to a substantial increase in the price of fish for the consumers.

5.7. Impact on third countries

The impact of the agreement on third countries in the context of the CFP and the fight against IUU fishing could be beneficial to the EU fishing fleet. Indeed, the implementation of the Agreement in the EU acquis would give the EU a stronger position to promote the ratification of the ILO Convention C.188 by third countries (See section 3.3).

For example, in the context of IUU fishing²²³, the European Commission has put Thailand on formal notice for not taking sufficient measures in the international fight against illegal fishing. Such a procedure could lead to a ban on import, in case the country does not take measures to improve the situation. This has triggered discussions with the Thai authorities on the working conditions in its national fishing sector²²⁴, which exports its products mainly to the US and the EU.

5.8. Overview of costs and benefits

The table below shows that in the first year the costs of implementing the Agreement are estimated to outweigh the benefits, mainly due to the costs to familiarise workers with the new provisions and to implement the agreement in practice (frontloading). In the full five year period²²⁵, in the most conservative scenario, benefits and costs cancel themselves out. In the average and optimistic scenario the benefits will outweigh the costs. However, it should be noted that it was not possible to quantify and monetise all costs and benefits²²⁶. For the calculations over a 5 year period were made a low estimate, a best estimate and a high estimate. These figures are presented in the table below.

Actor	Impact	Value first year	Value over 5 years (Low estimate)	Value over 5 years (best estimate)	Value over 5 years (high estimate)
Benefits					
Workers	Reduction in numbers of			1,000	

²²² ICF study, p. 126

²²³ In the context of IUU fishing, the European Commission has put Thailand on formal notice for not taking sufficient measures in the international fight against illegal fishing (IUU). http://europa.eu/rapid/press-release_IP-15-4806_en.htm

²²⁴ <http://www.theguardian.com/world/2016/jan/21/eu-investigators-to-decide-on-thai-fishing-industry-ban-over-slave-labour>

²²⁵ arising from it under the assumptions used to model the impacts

²²⁶ For estimated costs per Member State, please see Annex 4.

	accidents	200	200		2,000
	Reduction in numbers of occupational injuries	130	130	700	1,300
	Value of accidents avoided	€0.9 million	€0.4 million	€1.1 million	€12.4 million
Employers	Reduction in lost productivity from accidents	€0.4 million	€0.4 million	€1.9 million	€3.8 million
	Reduction in the lost productivity from occupational illness	€0.2 million	€0.2 million	€0.8 million	€1.6 million
Administrators	Reduction in hospital costs due to accidents and occupational diseases	€0.2 million	€0.2 million	€0.8 million	€1.5 million
Total Benefits		€1.7 million	€1.2 million	7.5 million	€19.7million
Costs	One-off costs				
Employer	Drafting or amending fisherman's work agreement and ensure it is on board the vessel	€0.5 million	€0.3 million	€0.5 million	€0.5 million
	Recurrent				
	Medical certificate ²²⁷	€0.5 million	€0.8 million	€1.3 million ²²⁸	€4.8 million
	repatriation	€0.1	€0.1	€0.5 million	€1.9 million

²²⁷ For vessels over 24 meters only, based on providing the certificate and lost output due to providing the certificate, based on the assumption that fishermen need to take time of work to obtain the certificate.

²²⁸ Certificate needs to be renewed every 2 years.

		million	million		
	Risk assessment	€0.4 million	€0.1 million	€0.7 million	€0.8 million
Total costs		€1.5 million	€1.3 million	€2.9 million	€3 million

6. COMPARISON OF THE OPTIONS

	Baseline	Agreement	Assessment of the change from baseline to agreement
Effectiveness	<p>The rate of occupational accidents and injuries will remain high</p> <p>The legal framework will remain fragmented</p>	<p>The agreement will help reduce injuries and accidents and therefore improve occupational safety and health of the workers in this sector.</p> <p>The sea fisheries sector will have a coherent legal framework, which will increase legal certainty.</p>	++
Efficiency	<p>The high rate of accidents and injuries in the sector, leads to costs of both the employer and the national administrations, and workers</p>	<p>The costs of the agreement are limited as it brings limited changes. However, costs are to be expected in the Member States who need to adjust their provisions. Costs can be mitigated by flexibility clauses in the agreement. Costs are set off against the benefits.</p>	-/+
Coherence		<p>The agreement fits in the objective of the Commission to improve the living and working conditions of workers in the maritime sector including fisheries. It enhances the protection of the labour rights mentioned in the EU Charter of Fundamental Rights of the European Union.</p>	+

Effectiveness

Compared to the baseline situation, the agreement will improve occupational safety and health for fishermen within the EU. It will provide a consolidated legal framework which is adapted to working conditions for the sea fishing sector.

Efficiency

The high rate of accidents and injuries in the sector, leads to costs of both the employer and the national administrations. For the employers it leads to a loss of production and a high turnover of staff. For national authorities this results in costs in terms of health care costs and social insurance. For workers: a high risk of accidents and occupational injuries leads to a loss of income in case of incapacity or disease and it might lead to an early leaving of the sector.

The costs of the agreement are limited as it brings limited changes. However, costs are to be expected in the Member States who need to adjust their provisions:

Continuously cost for the employers:

- a) medical certificate;
- b) repatriation costs;
- c) training on risk assessment;
- d) costs on medical treatment on board and ashore;

One-off:

- a) training and familiarisation with the new rules;
- b) drafting or adjusting fisherman's work agreements and store them on board of the vessel;
- c) adaptation of the national legislation to the requirements of the agreement

The costs seem to be limited and in direct relation with the intentions of the initiative. The permanent costs are set of against an expected continuing reduction of non-fatal accidents and injuries in the sector

There will be an increase of costs, but also benefits in particular for the employers in the Member States that would need to introduce health and safety measures and where a reduction in accidents can be expected.

The costs can be mitigated as the agreement provides for flexibility on some clauses such as medical certificates and also by the possibility to gradual implement the agreement over a period of 5 years.

Coherence

The agreement fits in the objective of the Commission to improve the living and working conditions of workers in the maritime sector including fisheries.

It enhances the protection of the labour rights mentioned in the EU Charter of Fundamental Rights of the European Union

The Agreement is consistent with the European Policy and measures to fight against IUU fishing activities. Better working conditions will increase the attractiveness of the sector operating legally, boosting competition among employers to get the best personnel on board and for this purpose indirectly ensure a healthier social climate.

Proportionality

The agreement makes a step forward to achieve the objectives set to improve the safety and health protection of workers and provide for a coherent legal framework. It does so at overall reasonable costs. The action is based on an agreement concluded by employers' and workers' representatives in the sector. The agreement would be implemented in EU legislation via a Council Directive which establishes minimum requirements and would leave the Member States the possibility to keep or set more favourable standards for workers. In addition, the agreement leaves the Member States flexibility to take into account specific features of their national situation. Therefore the Commission considers the agreement as an appropriate way forward.

7. HOW WOULD ACTUAL IMPACTS BE MONITORED AND EVALUATED?

7.1. Monitoring of the impacts

Without prejudice to the provisions of the agreement on the follow-up and review by the signatories, the European Commission shall monitor the implementation of the directive.

The following data will be examined:

Operational objective	Operational indicator	Data sources
Reduction of the numbers of accidents and occupational injuries	1. Total number/incidence rate of fatal/non-fatal accidents	Monitoring by the signatories of the agreement. Occupational safety and health survey both at European (LFS data) and national level. Data on absenteeism from work due to injuries and accidents
Reduction of health problems taking other aspects such as the increased average aging of the population working in the sector into account;	1. number of days absent in the sector 2. number occupational illnesses. 3. Total number/incidence rate of work-related health problems in the past 12 months	Data on employment in the sector Health surveys at national and EU level Specific health surveys in the sector
Improvement in living and working conditions in the sector	Number of complaints received by national authorities Number of complaints reported by the national enforcement authorities	Satisfaction surveys within the sectors at national level will need to be conducted. Questionnaires to the national authorities and national social partners.

7.2. Evaluation of the agreement

The directive implementing the agreement into EU legislation would be evaluated by the Commission services five years after the date of its entry into force. The evaluation will be based on data gathered from the monitoring exercise, complemented by the results of the monitoring and of the review by the signatories of the agreement as well as by information collected from Member States and other stakeholders.

In order to evaluate the results and the impact of the directive, the evaluation will focus on its effectiveness, efficiency, relevance, coherence and added value. Potential questions to be answered by the evaluation are: What have been the impacts on the main stakeholders in the sector? To what extent has the directive led to a reduction of occupational accidents and injuries. To what extent did the living and working conditions in the sector improve? Did the agreement support the fight against IUU fishing?

8. ANNEXES

Annex 1: Process

Lead DG: DG EMPL

Background

At international level, in 2002, the International Labour Organisation (ILO)²²⁹ started the discussions and preparations of complete and up-to-date international standards for the fishing sector, in order to guarantee proper protection for fishermen on a global scale and ensure a level playing field, taking into account the technological progress in the sector. The new standards would also address critical issues such as safety and health and take into account differences in fishing operations, employment arrangements, methods of remuneration and other aspects²³⁰. The EU, its Member States, employers' representatives (in particular fishing vessel owners), and workers' representatives (in particular fishermen representatives) actively participated in the negotiations and conclusion of the Work in Fishing Convention (2007) C 188, which was adopted at the 96th International Labour Conference (ILC) of the International Labour Organization ILO in 2007²³¹. The objectives of this Convention are to ensure that fishermen have decent conditions of work on board fishing vessels with regard to minimum requirements for conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. It applies to all fishermen and fishing vessels engaged in commercial fishing operations. It consolidates the existing ILO Conventions relating to fishermen.

On 10 October 2007, the EU Commission adopted a Communication²³² reassessing the regulatory social framework for more and better seafaring jobs in the EU. This Communication constituted the first phase of consultation of the EU social partners pursuant

²²⁹ The International Labour Organisation is a specialized agency of the United Nations with a tripartite structure, www.ilo.org

²³⁰ ILO Report " Conditions of work in the fishing sector: The constituents' views" Report V(2) submitted to the International Labour Conference 2004.

<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-v-2.pdf>

²³¹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

²³² COM(2007) 591 final

to Article 154 TFEU, by which the latter were invited to "*examine the possibilities of a joint initiative to promote the application within the EU of the provisions of the recent ILO Work in Fishing Convention, 2007*".

The EU social partners in the sea fisheries sector considered the Commission's invitation and decided to enter into negotiations at the end of 2009. The agreement under consideration was concluded on 8 May 2013. By letter of 10 May 2013 the EU social partners requested the implementation of their agreement in EU legislation through a Council Decision in accordance with Article 155 TFEU.

Representativeness of the EU social partners, who are the signatories of the agreement

When assessing a request from EU social partners to implement their agreement in EU law according to Article 155 TFEU, the Commission looks at representativeness and mandate of the social partners for the area concerned by the agreement. This ensures that the request is in line with the provisions of the TFEU and that the agreement can count on a broad support amongst those actually concerned.

The criteria are thereby interpreted in accordance with Article 1 of Commission Decision 98/500/EC of 20 May 1998²³³, which states that social partners at the European level should fulfil the following criteria:

- a. they shall relate to specific sectors or categories and be organised at European level;
- b. they shall consist of organisations which are themselves an integral and recognized part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;
- c. they shall have adequate structures to ensure their effective participation in the work of the [Sectoral Dialogue] Committees.

These conditions should be fulfilled at the time when the agreement was signed. A first version of the Sea Fisheries social partners' agreement was signed in May 2012 at the occasion of the 2012 Maritime Day in Gothenburg. As some of the clauses of this agreement were problematic as regards the criteria of legality, the EU social partners signed an amended agreement. In order to assess the representativeness of the EU social partners, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) conducted a study in 2012²³⁴.

The agreement concerns working conditions in the sea-fisheries, which matches with the sectoral delimitations of the sea-fisheries sectoral social dialogue Committee. Therefore, congruence between the coverage of the Committee and of the agreement is given.

The social partners participating in the Committee are Europêche and Cogeca on the employer side and ETF on the workers side.

²³³ Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Social Dialogue Committees promoting the dialogue between the social partners at European level, OJ L 225, 12.8.1998, page 27

²³⁴ http://www.eurofound.europa.eu/eiro/studies/TN1105068S/tn1105068s_1.htm

For Européche, the Eurofound representativeness study from 2012 identifies members in 11 Member States, namely BE, DE, DK, ES, FR, EL, IT, NL, PL, SE and UK.

Cogeca represents the general and specific interests of European agricultural, forestry, fisheries and agri-food co-operatives. It has members related to sea fisheries in the following 11 Member States: CY, DE, EE, ES, FR, EL, IE, IT, MT, NL and SI. This means that on the employer side, altogether 16 countries are represented in the committee. In some of these countries, the employer organisation is not involved in collective bargaining – also because of very small numbers of employees – and more a sort of professional association. The countries not represented on the employer side are the landlocked countries AT, CZ, LU, HU and SK, where no workplaces in sea-fisheries are available and FI, LV, LT, PT, RO, BG²³⁵.

In Bulgaria, Finland, Latvia and Lithuania, no sector-related employer organisation was found during the representativeness study. With the exclusion of Latvia, where company-level bargaining was reported, no significant industrial relations activities were recorded in these countries.²³⁶ It also means that with the exception of Portugal and Romania, in all countries where an employer organisation was found to exist, there was at least one organisation affiliated to either of the two employer organisations active in the EU Sectoral Social Dialogue Committee and only six of the recorded 36 employer organisations had no affiliation to either Européche or Cogeca.

On the workers side, ETF had membership related to sea-fisheries in 11 countries, namely BE, BG, DE, DK, ES, FR, IT, NL, PL, PT and UK, which leaves – beyond the aforementioned landlocked countries - fishermen in 11 Member States, i.e. CY, EE, EL, IE, FI, LV, LT, MT, RO, SE, SL not represented. According to the employment figures for the sector, for most of these countries the numbers of employees are around a 1,000 workers (in most of these countries, employment is considerably smaller). While IE, EL, RO and SE have more than 1,000 fishermen, a very large share of the fishermen is self-employed²³⁷.

Looking at trade unions active in the sector in the Member States, it appears that the large majority is actually a member of ETF, a few trade unions have – mostly additionally – membership with EFFAT, in Italy three trade unions (of the six active in the sector) are part of CESI²³⁸ and in Portugal as well as in Slovenia the representativeness study found trade unions without European level affiliation. It justifies that ETF represents the sector well.

As the economic situation of the sector has deteriorated since 2012/13, keeping the membership is a challenge for the employer organisations at EU and national level. However, Européche has managed to secure cooperation of the Latvian and Lithuanian employer associations.

In conclusion, with the exception of Portugal and Romania, there are no Member States where employer organisations active in sea-fishing are not represented at the European level, taking

²³⁵ Joining the EU on 1 July 2013, Croatia was not yet a member of the EU at the time the agreement was signed.

²³⁶ p. 13 of the 2012 Eurofound representativeness study, http://www.eurofound.europa.eu/sites/default/files/ef_files/docs/eiro/tn1105068s/tn1105068s.pdf

²³⁷ According to the ICF study, EL would have more than 1000 employees, but as for EL table 7 indicates a self-employment rate at 100% for coastal fisheries and almost 95% of the vessels smaller than 12 m, the large majority of the work-force will be self-employed. More than 70% of the fishermen in SE are self-employed. IE has also a large number of self-employed. About 40% of the RO fishermen are self-employed.

²³⁸ As EFFAT and ETF are members of ETUC, the ETF delegation to the sectoral social dialogue can also include members of trade unions which are affiliated to EFFAT only.

into account that the sector is relatively small in Romania. This leads to the conclusion that European level dialogue is on the side of employer organisations highly inclusive and that Europêche and Cogeca can together be considered as representative for the employers in the sector. As argued above the same is true for ETF on the workers' side. This leads to the conclusion that the social partners who have signed the agreement are representative of the sector and can therefore justly request the Commission for implementation of an agreement according Art. 155 TFEU.

Legality of the clauses

The Commission has examined the legality of the agreement. It has scrutinised each clause and has not found any to be contrary to EU law. The obligations which would be imposed on the Member States do not arise directly from the agreement between the social partners. They would rather result from its implementation by means of a Council decision, i.e. a directive. The scope and content of the agreement remains within the fields listed in Article 153(1) TFEU. Article 3(3) of the agreement contains a non-regression clause, which safeguards the existing level of protection of workers. Article 4 of the agreement states that it shall not affect any law, award or custom, or any agreement between fishing vessel owners and fishermen, which ensures more favourable conditions to fishermen than those provided for in this agreement. In addition, the necessary safeguards of the *acquis* will be included in the proposal for a Council directive (more favourable provisions and non regression), to which this agreement will be an annex.

External expertise and interservice group

The Commission launched a study to assess the costs and benefits of the implementation of the social partner agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization. This study has been carried out by a consortium led by ICF. The final report was delivered in December 2015²³⁹.

As part of the national data collection for this study, a legal gap analysis template was distributed to the national authorities and national social partner organisations of the 28 Member States to gather information about the detail and scope of existing legislation and the extent to which this divergences from the measures and standards set out in the social partner Agreement. This section briefly presents basic information on existing national legislation governing OSH and living and working conditions, as well as the social protection of fishermen at Member State level.

An interservice Steering Group, composed of representatives of DG EMPL, DG MARE, SJ, and SG was set up to accompany and discuss the results of the above mentioned external study. This group met for the first time in January 2015. The final report of the study was discussed by the interservice Steering Group on 15 October 2015. The group met four times. A more extended Impact Assessment Steering Group, to which SANTE, JUST, and EAC were invited met two times to discuss the proportionate impact assessment.

Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) examined this proportionate impact assessment report and issued an opinion²⁴⁰. Following the recommendations of the RSB for improvement with regard to the evolvement of the base line scenario, the EU policy context, and the assessment

²³⁹ Costs and Benefits of a Council Decision implementing the European sectoral social partners' Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, ICF International, 2015

²⁴⁰ This section will be completed after the RSB has issued an opinion in accordance with toolbox 8.

of impacts, different sections of the report were strengthened. In the problem definition, the description of the sector was enhanced, in particular with regard to its competitive position and the cross border dimension. In section 2 the EU policy context problems was further explained. In section 5 the assessment of impacts in Member States, different stakeholders and third countries were further explained. The section on monitoring and evaluation arrangements was strengthened.

The table below gives an overview on this:

RSB comment	How were the comments taken into account
Why have several Member States not ratified the ILO Convention C.188? How would the situation evolve in the absence of the adoption of the social partners' agreement?	Section 1.2 (drivers) has been enhanced as to why several Member States have not yet ratified ILO Convention, 2008. In addition it has been clarified how the situation would evolve in the absence of the social partners' agreement, in both section 1.2 and 1.4. Section 2.1. provides further detail why MS cannot achieve the objectives on their own.
What is the EU added value of the initiative?	In section 1 (Problem Definition) the description of the sector has been enhanced, providing more information on the competitive position of the sector. Section 2.2. on EU added value has been revised and expanded.
How would effective compliance and enforcement be ensured?	To section 1.2 (problem drivers) a section has been added on compliance and enforcement. In section 5.2 (impact on the Member States) more emphasis has been placed on the impact of the agreement on enforcement. In section 5 also some description has been added on the impact of prevention on both workers and employers.

Annex 2: Analytical models used in preparing the proportionate impact assessment

1. Methodology for Cost Benefit Analysis

This section provides a detailed description of the method used for the quantitative analysis of the costs and benefits of introducing the Agreement.

When looking at these data it is important to note a number of key challenges which affect the quality of the information flowing into any subsequent analysis.

There are two key sources of data on employment: the Data Collection Framework (DCF) and the Eurostat labour force survey (EU-LFS). Both data sets have their respective advantages and drawbacks and are not comparable. For instance, while DCF data is available for all countries and different years and can profile data on full-time equivalent employment in the sea fisheries sector, it cannot offer any information about self-employment, part-time employment or fixed-term employment in the sector. EU-LFS data, on the other hand offers information on different forms of employment and the characteristics of workers (e.g. age, education level etc.), but is not available for all countries but cannot distinguish between sea and inland fisheries.

In terms of fleet structure, while relatively rich data are available, when looking at the nature of the fleet for the sea fisheries sector, this information does not always break down into the categories which might be most suitable for an analysis of the impact of different legal standards, as – for instance – size categories do not correspond which key categories often distinguished in legislation.

Maybe most significantly for the purposes of this study, the level of information available on workplace related accidents and injuries and illnesses are relatively limited. Data for some indicators is available for the fisheries and aquaculture sectors, while for some indicators (e.g. incidence rates, these data are only available for the broader sector of fisheries, forestry and agriculture). Furthermore, there is acknowledged level of under-reporting of occupational accidents. Data on occupational illnesses and the cost and length of absence associated with such illnesses (or indeed the cost of treatment) is limited to national level ad hoc studies²⁴¹.

1.1 Underpinning data

Workers and vessels

The total number of workers in the fishing sector has been taken from the EU Labour Force Survey (EU-LFS). There are an estimated total of 108,500 workers in the industry (if AT, CZ, HU, LU and SK are excluded which only have an inland fishing sector). The total size of the fishing fleet is estimated to be 80,468 based on DCF figures.

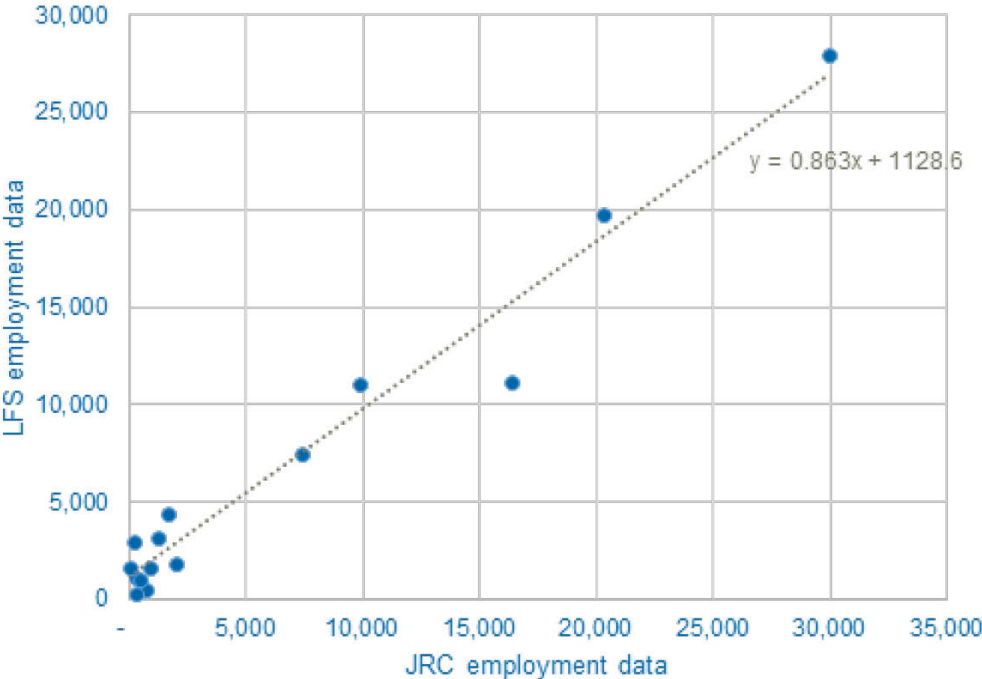
Data from the EU-LFS on employment were only available for 16 of the Member States analysed. However, data from the EU-LFS were required so that self-employed workers and self-employed workers with no employees could be identified. Therefore, in order to fill the gaps in employment data for the remaining seven countries with a sea fishing sector²⁴², we mapped plotted the relationship between employment data from the DCF report and the EU-LFS for Member States where both estimates were available. There was a strong relationship

²⁴¹ ICF study, section 2.1.

²⁴² These Member States were: BE; BG; CY; DK; IE; LV and SI.

between the employment figures reported in the DCF reports and the EU-LFS. Therefore, we used the equation as highlighted in figure 1 and DCF reported data to estimate the employment figures from the EU-LFS for the seven Member States where no data was available in the LFS.

Figure 1: Relationship between DCF and LFS employment figures



Source: LFS (2012 – 2013) DCF (2012 – 2013)

However, not all of the changes in legislation will affect the entire workforce in the industry. Most of the changes in legislation only apply to employees or self-employed workers working alongside employees where they have the potential to affect their health and safety. Self-employed workers not working alongside employees will not be affected by the legislation and were therefore be excluded from the analysis.

Again, not all the Member States analysed had information available for the number of workers who were self-employed with employees and self-employed without employees (the proxies being used for self-employed working alongside employees and self-employed not working with employees, as these are the only data available from the EU-LFS). Where the proportion of self-employed workers ‘with or without’ is not provided, the proportions from a similar Member State (e.g. for Cyprus the same proportions were applied as in Greece; for Bulgaria the same as in Romania etc.) where information is available has been applied to the number of workers in the Member State. This allows an estimation of the number of self-employed workers working alongside and not working alongside employees to be made.

For some of the calculations, the number of vessels in the fleet which have more than one crew member needed to be estimated. In order to do this, the total number of self-employed workers has been subtracted from the total number of vessels in the fleet.

However, in some Member States the reported number of self-employed workers with no employees is larger than the size of the fleet. Where this is the case, the number of self-employed workers without employees has been divided by the number of workers on vessels

under 12 metres. This proportion has then been multiplied by the number of vessels under 12 metres to estimate the number of vessels used only by self-employed workers without employees. This second estimation measure used an assumption that self-employed workers without employees would work on vessels less than 12 metres.

Finally, some of the articles in the Agreement only apply to vessels longer than 24 metres and the employees who work on these vessels. The number of vessels over 24 metres in the fleet of each Member State is included in the DCF figures. It has been assumed that no vessels over 24 metres are operated by self-employed workers without employees, as the manning of such vessels would involve more crew than one person.

The number of workers employed on vessels over 24 metres is provided by the DCF data. For this analysis, this number has been divided by the total number of workers in the DCF data to give a percentage of the workforce that works on vessels over 24 metres. This has then been multiplied by the total number of workers in fishing industry in the EU-LFS in each Member State. This provides an estimate of the number of workers who work on vessels larger than 24 metres.

Labour Costs

The average hourly labour cost for the fishing sector is taken from data in the DCF reports, which presents the total annual labour cost and the number of workers; and from the EU-LFS on the number of hours worked. It has been assumed that the average number of hours worked in the agriculture, forestry and fishing sector is representative of the fishing industry (an average of 39.2 hours per week in the EU).

The total reported labour cost has been divided by the total number of workers from the DCF report to estimate the labour cost per worker. This was then divided by 52 to give a weekly labour cost per worker, and then divided by the number of hours worked per week to estimate the hourly labour cost in the fishing industry.

Prices

Price level information was required to calculate some of the costs and benefits of the introduction of the provisions of the Agreement. These prices included the cost of hospitalisations, the cost of training, the cost of an employee obtaining a medical certificate and the cost of repatriation.

There were no European wide price levels for the prices needed to estimate the costs needed for the analysis. Therefore, we took estimates from particular Member States and used these as a basis for our cost analysis (as presented in the main body of the report).

The prices from individual countries were converted into Member State specific prices using Purchasing Power Parities (PPPs) and Exchange Rates. The equation below describes how prices were converted into Member State specific prices (in €values):

$$P_{MS} = \frac{P_{SC}}{PPP_{SC}} * \frac{PPP_{MS}}{EX_{MS:€}}$$

Where:

P_{MS} = Price level in a Member State;

P_{SC} = Price level of good in source country (in domestic currency);

PPP_{SC} = Purchasing Power Parity for the source country (i.e. how much domestic currency needs to be spent in the source country to buy the same amount of goods that can be bought for 1 EUR in the EU28);

PPP_{MS} = Purchasing Power Parity for Member State (i.e. how much currency needs to be spent in Member State to buy the same amount of goods that can be bought for 1 EUR in the EU28); and

EX_{MS:€} = The exchange rate between the Member States domestic currency and the Euro.

1.2 Baseline number of accidents and work-related illnesses

The number of work related health problem and occupational accidents have been taken from the EU-LFS. Where the number of accidents or health problems was unreported for a Member State, the number was estimated using the size of the fishing workforce and the number of reported cases in other Member States.

1.2.1. Baseline cost associated with accidents and work-related illnesses

Two separate costs have been estimated for occupational accidents and work-related health problems: the loss of production due to the worker being absent from work; and the cost of medical treatment as a result of hospitalisation. Arguably, difficult working conditions and health and safety risks can also have an impact on productivity, however, no data were available to estimate this impact, and this can therefore only be taken into account in the qualitative assessment.

Productivity costs

The duration of absence from work due to work-related health problems and occupational accidents is provided in the EU-LFS. These data are presented in bands (for example one to three days; four days but less than one week etc.). The midpoint of these bands has been multiplied by the number of occupational accidents and work-related illnesses that caused that duration of absence. These have then been divided by the total number of accidents or work-related illnesses to estimate the average duration of absence. Where no information is available for a Member State, a European average duration of absence has been used.

In order to estimate the loss of production from these accidents the number of working days lost due to accidents and work-related illnesses have been multiplied by a daily labour cost for the fishing industry in each Member State. This calculation is summarised in the equation below:

$$TPC_{MS} = \sum_{t=1}^{t=5} (N_{MS,t} * LC_{MS} * A_{MS} * \delta_t)$$

$$TPC_{EU} = \sum TPC_{MS}$$

Where:

TPC_{MS} = The total cost of lost production lost due to workers absence due to accidents in each Member State;

t = year;

N_{MS, t} = the number of accidents in each Member State and each year;

LC_{MS} = the hourly Labour cost in each Member State;

A_{MS} = the average duration of absence in each Member State;

δ_t = The discount rate; and

TPC_{EU} = The total cost of lost production lost due accidents in the EU.

The same equation has been used to estimate the cost of lost production due to work-related illnesses, with the duration of absence and incidence numbers altered.

Hospital costs

The proportion of accidents which require hospital treatment has been assumed to be 26%, and the proportion of work-related illnesses requiring hospitalisation has been assumed to be 30%. These assumptions are based on the proportion of reported accidents and illnesses for which workers are absent from work for two weeks or longer (based on information from the EU-LFS). This gives an estimate of the number of hospital appointments required to treat occupational accidents and work-related illnesses in the fishing industry in each Member State.

Unfortunately the data from the EU-LFS about the health problems caused by occupational accidents and work-related health problems does not provide enough detail to form estimates of the number of each type of illness. Therefore we have taken estimates from the literature on the types of injuries and illnesses suffered by workers in the fishing industry. These proportions have been multiplied by the total number of hospitalisations for accidents and work-related health conditions, to provide an estimate of the number of health conditions by type of condition.

There are no EU wide estimates of the cost of providing health care for different health conditions. We have therefore taken estimates from the UK (National Health Service Tariff band information) on the unit cost of a hospitalisation by different conditions. The number of hospitalisations for each condition has been multiplied by the unit cost of hospitalisation for each condition in each Member State.

1.2.2. Baseline cost of fatal accidents

The number of fatal accidents in the fishing and aquaculture sector is provided by the ESAW data. It has been assumed that the fatal accidents in this sector all relate to the fishing industry rather than the aquaculture industry.

In order to estimate the value of fatal accidents, a Value of Statistical Life (VOSL) approach has been used. This approach estimates the statistical value of a life in terms of loss of future productivity, the cost emergency rescue and healthcare treatment, and the value people place on reducing the risk of fatality. Following guidance in the European Commission Impact Assessment guidelines, a value of €4.1 million has been used in this calculation. The total number of lives lost has been multiplied by the VOSL to estimate the cost of fatal accidents.

2. Change in number of accidents and work-related illnesses

No evidence was discovered which presented how the number of accidents and work-related health conditions would be prevented following the introduction of the Agreement, or similar legislation in a different sector. Therefore, it was not possible to state what the impact introducing the Agreement would have on accidents and work-related health conditions with any degree of confidence.

The relationship between the distance between Member States national legislation and the rate of accidents and work-related ill health has been analysed. This evidence was inconclusive as well. The analysis showed a positive relationship between the distance of the national legislation from the Agreement and the rate of accidents. However, it also showed that there was a negative relationship between the distance of the national legislation from the Agreement and the rate of work-related ill health.

This meant that there was no data to base the change on. Therefore, our analysis examined a scenario where a Member State which had no measures in place which matched the requirements of the Agreement (a distance from the Agreement of 1 in the legislative match analysis) reduced the number of accidents and incidence of work-related ill health by 5%. This level was chosen as a conservative estimate, so that the benefits of the legislation were not overestimated.

The change in the number of accidents and work-related is estimated using the equation below:

$$NA_{MS}^* = NA_{MS} - (NA_{MS} * D_{MS} * \alpha_I)$$

$$CNA_{EU} = \sum_{t=1}^{t=5} (NA_{MS} - NA_{MS}^*)$$

Where:

NA_{MS}^* = Number of accidents following the introduction of the Agreement in each Member State;

NA_{MS} = Number of accidents prior to the introduction of the Agreement in each Member State;

D_{MS} = Legislative distance between current national legislation and the Agreement (a variable taking values between zero and one);

α_I = Assumed change in the incidence of accidents and work related illnesses (assumed to be 5%);

CNA_{EU} = Total change in the number of accidents in the EU following the introduction of the Agreement; and

t = time.

The change in the number work-related health problems has been estimated using the same equation.

2.2.1. Cost of accidents and illnesses

The new cost of occupational accidents and workplace illnesses has been calculated in the same way, using the revised number of occupational accidents and work-related illnesses. This value was then subtracted from the baseline value to estimate the change in costs as a result of introducing the articles in the Agreement.

3. Cost of training for skippers

No baseline cost for the training of skippers has been estimated. We have estimated the cost of providing training for skippers in Member States where there was previously no requirements for training skippers.

The cost of training for skippers is estimated to be a one-off cost – skippers are trained once and do not need continuous training in the following years. There are two separate costs associated with training for skippers: the loss of output resulting from skippers attending the training rather than working; and the cost to employers of providing the training for skippers.

The population affected by the change in legislation is skippers of vessels which have employees. This population was multiplied by the legislation gap analysis so that the population was zero in Member States where skippers already require training under the national legislation.

The direct cost to employers of providing training to skippers is estimated by multiplying the affected population in each Member State by the price of training in each Member State. This estimation is summarised in the equation below:

$$TC_{EU} = \sum (N_{MS} * P_{MS})$$

Where:

TC_{EU} = The total cost of skipper training in the EU;

N_{MS} = The affected population in each Member State (the number of skippers requiring training); and

P_{MS} = The unit cost of training for skippers in each Member State

The indirect cost of training skippers, the loss of output from skippers attending training has been estimated using the equation below. The population affected by the change in legislation has been multiplied by the duration of the training (assumed to be seven hours) and the Labour Cost for staff in each Member State.

$$TPC_{EU} = \sum (N_{MS} * D * LC_{MS})$$

Where:

TPC_{EU} = The total cost of lost output due to skippers attending training in the EU;

N_{MS} = The affected population in each Member State (the number of skippers requiring training);

D = The duration of the training, assumed to be seven hours; and

LC_{MS} = The hourly Labour cost in each Member State.

4 Cost of medical certificate

No baseline cost for the medical certificates for the workforce has been estimated. We have estimated the cost of medical certificates for the workforce in Member States where there was previously no requirements for medical certificates.

The cost of the medical certificate is estimated to be a recurring cost – workers are required to obtain a medical certificate every two years. Therefore, the workforce is assumed to be require medical certificates in year one, year three and year five of the time period analysed. There are two separate costs associated with the medical certificate: the lost output from workers obtaining the medical certificate rather than working; and the cost to employers of the medical certificate.

The population affected by the change in legislation is all workers except for those who are self-employed with no employees. This population was multiplied by the legislation gap analysis so that the population was zero in Member States where workers already require training under the national legislation.

The direct cost to employers of workers obtaining medical assessments is estimated by multiplying the affected population in each Member State by the price of a medical assessment in each Member State and the appropriate discount rate for the year. This estimation is summarised in the equations below:

$$TC_{MS} = \sum_{t=1}^{t=5} (N_{MS,t} * P_{MS} * \delta_t)$$

$$TC_{EU} = \sum TC_{MS}$$

Where:

TC_{MS} = Total cost of medical assessments in each Member State;

t = year;

$N_{MS,t}$ = The affected population in each Member State and each year (the number of workers obtaining a medical certificate);

P_{MS} = The unit cost of a medical certificate in each Member State;

δ_t = The discount rate; and

TC_{EU} = Total cost of medical assessment in the EU.

The indirect cost of workers obtaining a medical certificate, the loss of output has been estimated using the equation below. The population affected by the change in legislation has been multiplied by the time spent obtaining the medical certificate (assumed to be three and a half hours), the labour cost for staff in each Member State and the appropriate discount rate for each year.

$$TPC_{MS} = \sum_{t=1}^{t=5} (N_{MS,t} * LC_{MS} * D * \delta_t)$$

$$TPC_{EU} = \sum TPC_{MS}$$

Where:

TPC_{MS} = The total cost of lost output lost due to workers obtaining medical certificates in each Member State;

t = year;

$N_{MS, t}$ = The affected population in each Member State and each year (the number of workers obtaining a medical certificate);

LC_{MS} = The hourly Labour cost in each Member State;

D = The duration of the absence to obtain the certificate, assumed to be three and a half hours;

δ_t = The discount rate; and

TPC_{EU} = The total cost of lost output lost due to workers obtaining medical certificates in the EU.

5 Administrative cost

No baseline cost for the administration linked to the fishermen's agreement has been estimated. We have estimated the cost of administrative tasks related to the fisherman's agreement in Member States where there were previously no requirements in the

The administrative cost linked to the fisherman's agreement is estimated to be a one-off cost – workers are required to carry out the administrative task once and do not need to carry it out continuously in the following years. There is a single administrative cost: the lost productivity from workers carrying out the administrative task rather than working.

The population affected by the change in legislation is all workers except for those who are self-employed with no employees. This population is taken from the LFS. This population was multiplied by the legislation gap analysis so that the population was zero in Member States where workers are already required to have the fisherman's agreement under the national legislation.

The cost of workers carrying out administrative tasks relating to the fisherman's agreement is estimated by multiplying the affected population in each Member State by the duration of the administrative task (assumed to be X hours) and the hourly labour cost for each Member State. This estimation is summarised in the equations below:

$$TPC_{EU} = \sum (N_{MS} * D * LC_{MS})$$

Where:

TPC_{EU} = The total cost of lost productivity lost due to administrative tasks relating to the fisherman's agreement in the EU;

N_{MS} = The affected population in each Member State (the number of workers needing to carry out administrative task);

D = Duration of administrative task (assumed to be X hours); and

LC_{MS} = The hourly Labour cost in each Member State.

6 Cost of risk assessment

No baseline cost for risk assessments have been estimated. We have estimated the cost of risk assessment tasks in Member States where there were previously no requirements for risk assessments in the national legislation.

The costs associated with risk assessments are estimated to be a one-off cost – one risk assessment is required to be carried out in the first year of the period analysed and does not need to be carried out in the following years. There is a single cost associated with the risk assessment: the lost productivity from a worker (assumed to be the skipper) carrying out the risk assessment rather than working.

It has been assumed that a risk assessment is required on all vessels other than vessels used by self-employed workers with no employees. This population was multiplied by the legislation gap analysis so that the population was zero in Member States where workers are already required to have a risk assessment under the national legislation.

The cost of a risk assessment is estimated by multiplying the affected population in each Member State by the duration of the risk assessment (assumed to be seven hours) and the hourly labour cost for each Member State. This estimation is summarised in the equations below:

$$TPC_{EU} = \sum (N_{MS} * D * LC_{MS})$$

Where:

TPC_{EU} = The total cost of lost productivity lost due to risk assessments being carried out in the EU;

N_{MS} = The affected population in each Member State (the number of risk assessments being carried out);

D = Duration of risk assessment task (assumed to be seven hours); and

LC_{MS} = The hourly Labour cost in each Member State.

7 Cost of repatriation

No baseline cost for the repatriations has been estimated. We have estimated the cost to employers for repatriations which they would not otherwise have had to pay for in Member States where there were previously no requirements for repatriations.

The cost of repatriations is estimated to be a recurring cost – employers will be required to pay for the repatriation of ill workers in every year analysed. The cost associated with repatriations is the payment employers will have to make to repatriate injured workers.

The population affected by the change in legislation is workers on vessels larger than 24m. We have assumed that no self-employed workers with any employees work on vessels larger than 24 metres. In order to estimate this cost we have had to make assumptions on the rate of accidents by different types of fishing vessel. Therefore, it has been assumed that:

- The rate of accidents and illnesses is the same for self-employed workers and employees; and
- The rate of accidents and illnesses is the same for workers on different sizes of vessels.

The proportion of accidents and work related illnesses for workers on vessels over 24 metres in each Member State is equal to the proportion of workers employed on vessels over 24 metres in each Member State. Therefore the percentage of employment on vessels larger than

24 metres in each Member State has been multiplied by the number of accidents and work related illnesses.

There is no information on the number of illnesses or accidents that require repatriation. Therefore, it has been assumed that 1% of illnesses and accidents on-board vessels longer than 24 metres will require repatriation. This number of accidents was multiplied by the legislation gap analysis so that the number of repatriations was zero in Member States where employers are already required to pay for repatriations under the national legislation.

The estimated cost of repatriations has been estimated using the equation below. The number of accidents and illnesses requiring repatriation each year is multiplied by the cost of a repatriation (which has been estimated using information from the UK and the appropriate discount rate for the year.

$$TRC_{MS} = \sum_{t=1}^{t=5} (R_{MS,t} * P_{MS} * \delta_t)$$

$$TRC_{EU} = \sum TRC_{MS}$$

Where:

TRC_{MS} = Total repatriation cost in each Member State;

t = year;

$R_{MS,t}$ = Repatriations required in each Member State in each year;

P_{MS} = Unit cost of repatriation in each Member State;

δ_t = The discount rate; and

TRC_{EU} = The total cost of repatriations in the EU.

8. Sensitivity analysis

We have conducted a sensitivity analysis as part of the quantitative analysis. Sensitivity analysis is an exercise which measures how using different assumptions used in a calculation affect the outcome. Therefore, we have varied a number of the assumptions used in the quantitative analysis. Other than the change in assumptions, all the calculations have been carried out exactly as described in the section above.

Table 1: Assumptions varied in sensitivity analysis

	Low end value	Best estimate value	High end value	Rationale
Impact of legislation on accidents and illnesses	1% reduction	5% reduction	10% reduction	Scenario analysis, presents a range of changes in accidents and illnesses in the absence of conclusive evidence
Size of vessel for training and risk assessment	Exclude vessels smaller than 12m	All vessels included	All vessels included	Low estimate excludes all vessels under 12m, assuming they are exempt from training and risk assessment. All other estimates use all vessels excluding vessels used by self-employed workers with no employees.
Number of repatriations	0.5% of accidents and illnesses	1% of accidents and illnesses	2% of accidents and illnesses	Scenario analysis, presents a range of changes in accidents and illnesses in the absence of conclusive evidence
Cost of repatriation	€5,000	€10,000	€20,000	UK foreign office range of values, depending on distance and type of repatriation.
Cost of training	€8 (UK)	€15 (UK)	€180 (DE)	Low estimate is 85% of central estimate; high estimate taken from separate source. All values adjusted using PPP and exchange rates.
Cost of medical certificate	€8 (UK)	€15 (UK)	€180 (DE)	Low estimate is 85% of central estimate; high estimate taken from separate source. All values adjusted using PPP and exchange rates.
Duration of administration for fishermen's	1 hour	2 hours	3 hours	Duration of administrative task unclear, therefore range of duration used.

agreement				
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Annex 3: Who is affected by the initiative and how

Who is affected	How
National authorities	<p>To transpose the Directive implementing the agreement into national legislation. The statutory transposition of 2 years could apply. This would entail among others:</p> <p>to decide whether the agreement needs to be implemented gradually over the a five year period, after consultation of the national social partners;</p> <p>to determine to the form, content and procedure of the medical examination;</p> <p>to determine to the form, content and procedure of the medical certificate;</p> <p>to guarantee the right of repatriation if the fishing vessel owner does not pay the cost.</p> <p>National enforcement authorities to enforce the national legislation which transposes the directive implementing the agreement in EU national law</p>
Fishing vessel owner.	<p>To ensure that the skipper of the vessel has the appropriate means to comply with the agreement.</p> <p>To pay for the medical certificate and ensure fishermen have a certificate.</p> <p>To comply with working agreements.</p> <p>To provide for food and water on board the vessel in accordance with the agreement.</p> <p>To provide fishermen with a written work agreement and carry a copy of the fisherman’s work agreement on board.</p> <p>To provide the fishermen with medical treatment on board and ashore if not covered by the social security system.</p>

	To pay the costs for repatriation.
Workers	To obtain a medical certificate to work on a sea fishing vessel To comply with working time limits to prevent fatigue To comply with the health and safety requirements on board the vessel.

Annex 4: Estimated costs per Member State

Member State	Medical Certificate	Fisherman's work agreement ²⁴³	Right for repatriation ²⁴⁴
EL	complies	1,50 euro per worker ²⁴⁵ Total: 35,916 euro	Complies
ES	complies	18 euro per worker ²⁴⁶ Total: 0.5 million euro	Estimated 10.000 euro per repatriation ²⁴⁷ Total costs 44,800 euro per year
IE	Certificate exists, content of examination needs to be adjusted in legislation. No costs expected	Need to ensure that agreements are on board of the vessel ²⁴⁸ 15 euro per worker Total: 33,495 euro	National authorities indicated legislation needs updating, No specific information
IT	Certificate exists, content of examination needs to	No information provided by national authorities If fisherman's work	Estimated 10,000 euro per repatriation

²⁴³ Costs are calculated on the average labour costs per hour in the country for the sector and on the assumption that the drafting a full agreement would cost 2 hours. For countries which have already an employment agreement for fishermen and have to ensure that it is carried on board of the vessel. One hour is calculated.

²⁴⁴ Based on estimates by the UK authorities, so this might be an over estimate for other Member States. Cost varies depending on the distance between the place of repatriation and the home Member State. Right of repatriation calculated as 1% of all non-fatal accidents lead to repatriation, based on the figures of 2012. ICF study table 11.

²⁴⁵ According to the ICF study, table 7 self-employed without personnel make up 80% of the total employment. Only workers would have to comply with the agreement, so this is likely an overestimate.

²⁴⁶ Based on average labour costs per hour in the sector, and assuming 2 hours per worker to draft the contract.

²⁴⁷ Repatriation right exists, for fishermen registered under the Spanish social security legislation and sailing on a fishing vessel flying under Spanish flag. This right would need to be expanded to migrant workers not registered under the social security system and sailing on vessels flying the Spanish flag.

²⁴⁸ To ensure that the fisherman's work agreements are on board of the vessel, it is estimated that this will take an hour based on the average labour costs per sector.

	be adjusted. No costs expected	agreement needs to be introduced. 10 euro per worker Total costs: 188,460 euro	Total costs 18,100 per year
HR	Complies	Complies	Fishing fleet sails in coastal waters, so the repatriation clause would not be applicable.
LT	Complies partly, but no detailed information given	Complies	Estimate 10,000 euro per repatriation 500 euro per year
LV	No cost complies	Need to adjust to the specifications of the sector 7 euro per worker Total cost: 2,471 euro	Complies
PT	Complies	Need to ensure that agreements are on board of the vessel 5, 50 euro per worker Total costs: 82,121 euro	Complies
RO	Obligation for all employees to have a medical certificate exists. Needs to be sector specific	Need to adjust to the specifications of the sector 16,72 euro per worker Total costs 652 euro	No information available
SI ²⁴⁹		Need to adjust to the specifications of the sector Total worker: 7 euro	Right of repatriation does not exist, presumably because of the coastal nature of the sector

²⁴⁹ SI has a small scale fishing sector, where most fishermen are part-time employed and have other jobs in for instance tourism

		472, 50	
UK	115 euro per worker On average 300 euro per enterprise ²⁵⁰ .	8,30 euro per worker Total costs: 81,904 euro	Complies

Annex 5: data on the sector²⁵¹

1. Size of fleet

The *largest sea fishing fleets* can be found in Greece (19% of total EU fleet), Italy (17%) and Spain (13%). These three Member States combined therefore make up almost 50% of the total EU sea fishing fleet. Portugal (10%), the UK (8%) and France (7%) have also relatively large fleets, whereas the Belgian, Latvian, Lithuanian, Romanian and Slovenian fleets respectively make up less than 1% of EU vessels in the sector.

The size of fishing vessels influences not only accessible fishing grounds (and therefore distance and number of days away from shore), but also coverage by existing legislation²⁵² and the provisions of the Agreement²⁵³. Regrettably, the data available does not break down into all the size categories required to assess coverage of existing legislation, but the most relevant categories are presented in Table 1 below.

Fleets with the greatest share of *vessels over 24 metres*²⁵⁴ were registered in Belgium (44% of the Belgian fleet), Lithuania (28%), the Netherlands (20%) and Latvia (16%). Smaller fishing vessels (under 12m) were more prevalent in Romania (98%) and Finland (97%), Bulgaria (96%), Cyprus (96%), Greece (94%) and Estonia (94%). Across those Member States making up the largest share of the EU fishing fleet, large vessels above 24 metres were relatively more prevalent in Spain (8%), whereas small vessels predominated in Greece (94%).

As shown in Table 1 in the data Annex, fleets with the highest share of very large vessels (over 40 metres) were registered in Lithuania (46%) and the Netherlands (25%).

Table 1 Number and length of vessels by Member State (2012), shares of vessels of different size categories as part of total fleet, by share of total EU fleet

Country	Total number of vessels	Share of total EU fleet	Share of small vessels (<12m)	Share of medium vessels (12-24m)	Share of large vessels (>24m)
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²⁵⁰ Based on total employment in the sector and number of enterprises in the sector, it would come to an average of 2 workers per enterprise.

²⁵¹ ICF Study Section 2

²⁵² Directive 1993/103/EC, for instance, specifies different provisions for vessels over 15, 18 and 45 metres.

²⁵³ As will be further elaborated in section 3, some provisions of the agreement only apply (initially) to vessels over 24 metres in length.

²⁵⁴ For the purpose of this study vessel sizes have been grouped into three categories: small vessels (below 12 meters), medium vessels (between 12 and 24 meters) and large vessels (24 meters and over). This does not ideally match the categorisations used for the purposes of some existing legislation, but is the only data available.

Country	Total number of vessels	Share of total EU fleet	Share of small vessels (<12m)	Share of medium vessels (12-24m)	Share of large vessels (>24m)
Greece	16,063	19%	94%	4%	1%
Italy	14,443	17%	70%	27%	3%
Spain	10,544	13%	73%	19%	8%
Portugal	8,398	10%	91%	7%	2%
United Kingdom	6,413	8%	85%	12%	4%
France	5,830	7%	84%	13%	3%
Croatia	4,236	5%	85%	12%	3%
Finland	3,359	4%	97%	2%	1%
Bulgaria	1,192	1%	96%	3%	0%
Ireland	2,203	3%	86%	9%	5%
Denmark	2,052	2%	78%	18%	3%
Germany	1,564	2%	80%	17%	3%
Cyprus	1,382	2%	96%	4%	1%
Sweden	1,322	2%	85%	11%	3%
Malta	1,060	1%	92%	7%	1%
Estonia	923	1%	94%	2%	4%
Poland	806	1%	75%	19%	6%
Netherlands	740	1%	49%	30%	20%
Latvia	279	0%	80%	4%	16%
Romania	261	0%	98%	1%	1%
Slovenia	181	0%	87%	13%	1%
Lithuania	151	0%	70%	2%	28%
Belgium	86	0%	1%	55%	44%
Total	8,3478	100%	84%	13%	4%

Source: ICF calculations based on DCF data as reported in Scientific, Technical and Economic Committee for Fisheries (STECF); *The 2014 Annual Economic Report on the EU fishing Fleet* (STECF 14-16), 2014.

Between 2008 and 2012 the size of national fleets declined in most countries where data are available for both years. Over this time there has been a decline in the number of larger vessels, which accounted for a 4.54% of the total fleet in 2008, falling to 3.51% in 2012. At the same time, there was an increase in the number of small vessels over the same time, which accounted for 79.72% of the total fleet in 2008, but 83.55% in 2012.

2. Number of enterprises

DCF data show that in 2012 there were 61,274 enterprises in the EU sea fisheries sector²⁵⁵. These were primarily enterprises with only one vessel (88%), and very rarely (0.5%) enterprises with 5 vessels or more.

The *number of enterprises* in the sea fisheries sector is highest in those Member States with the largest fleet in terms of vessels, gross tonnage and engine power. In 2012, Greece had the largest number of fishing enterprises (almost 14,000, or 23% of all EU enterprises in the sector), followed by Spain (16%), Italy (15%), France (8%), the UK (7%) and Portugal (7%).

In all Member States, the share of single-vessel enterprises by far outweighs those with several vessels. The share of such micro-enterprises is largest in Lithuania (where 100% of enterprises consist of only one vessel), Belgium (98%), Finland (97%), Malta (97%), and the United Kingdom (96%). Conversely, Latvia is the country with a highest number of large enterprises (more than 5 vessels), although this remains a comparatively low proportion of the total number of enterprises (5%).

Table 2: Number and size of enterprises by Member State (2012), by total number of enterprises, by share of total EU fleet²⁵⁶

Country	Total number of enterprises	Share of total EU fleet	Share with one vessel	Share with 2 to 5 vessels	Share with 5 vessels or more
Greece	13,918	23%	88%	12%	0%
Spain	9,776	16%	94%	6%	0%
Italy	9,142	15%	84%	14%	3%
France	4,993	8%	88%	12%	0%
United Kingdom	4,357	7%	96%	4%	0%
Portugal	4,084	7%	95%	5%	0%
Croatia	3,602	6%	79%	20%	0%
Ireland	1,901	3%	87%	13%	0%
Finland	1,500	2%	97%	3%	0%
Denmark	1,492	2%	95%	5%	0%
Sweden	1,055	2%	79%	21%	0%
Germany	1,053	2%	72%	27%	1%
Malta	1,028	2%	97%	3%	0%
Cyprus	849	1%	100%	0%	0%
Poland	702	1%	92%	8%	0%
Estonia	658	1%	70%	29%	0%
Netherlands	471	1%	74%	23%	2%
Bulgaria	184	0%	88%	12%	1%

²⁵⁵ Even if this particular variable has more consistent data for 2013 (i.e. only three Member States are missing), the missing countries are those with large fleets and significant fishing activity (Denmark, Greece and Italy), thus the reported figure is likely to be a considerable underestimation.

²⁵⁶ Croatia was not yet a member in 2012. For Croatia the first available numbers are used

Country	Total number of enterprises	Share of total EU fleet	Share with one vessel	Share with 2 to 5 vessels	Share with 5 vessels or more
Slovenia	146	0%	70%	29%	1%
Latvia	123	0%	53%	42%	5%
Romania	91	0%	63%	34%	3%
Belgium	80	0%	98%	3%	0%
Lithuania	69	0%	62%	35%	3%
Total	61,274	100%	89%	11%	1%

Source: ICF calculations based on data from the Scientific, Technical and Economic Committee for Fisheries (STECF) "The 2014 Annual Economic Report on the EU fishing Fleet (STECF 14-16)", 2014.

Between 2008 and 2012, the number of fishing enterprises increased in Cyprus (73% increase in the total number of enterprises) and Estonia (53%). Finland, Ireland and France also increased their number of enterprises (around 20% each)²⁵⁷. The largest proportional decreases took place in Romania (46% of its enterprises disappeared), Malta (34%), Lithuania (29%) and Spain (22%). Further information about trends in the number and size of enterprises in the sector can be found in Annex 2.

3. Trends in costs and income

In 2012, the EU fishing fleet generated more €6,940 million in revenue²⁵⁸. Revenues include income from landings (€6,848 million) and other income (€2 million). The highest revenue was generated by the Spanish fleet (over €1,907 million), where it increased considerably compared to 2008..

Table 3: Total revenue and source by Member State (2012), share of different revenue streams, by share of total EU revenue

Country	Total revenue (€)	Share of total EU revenue	Income from landings	Other income
Spain	- 1,913,251,389	26%	100%	0%
France	- 1,079,730,174	15%	99%	1%
United Kingdom	- 980,729,042	14%	96%	4%
Italy	- 932,924,557	13%	100%	0%
Portugal	- 439,432,381	6%	100%	0%

²⁵⁷ Data for Bulgaria shows an increase so significant that points towards an error in the data, consistent with the questions raised on the data quality for this country.

²⁵⁸ This figure excludes BG, HR, CY and MT which data are considered unreliable according to the 2014 AER.

Country	Total revenue (€)	Share of total EU revenue	Income from landings	Other income
Denmark	- 385,188,772	5%	98%	2%
Netherlands	- 358,513,374	5%	100%	0%
Ireland	306,006,334	4%	98%	2%
Croatia	245,533,416	3%	100%	0%
Sweden	152,391,349	2%	82%	18%
Germany	150,757,171	2%	98%	2%
Belgium	80,386,160	1%	95%	5%
Poland	65,315,129	1%	85%	15%
Lithuania	43,222,030	1%	99%	1%
Finland	43,168,816	1%	89%	11%
Latvia	24,046,651	0%	97%	3%
Malta	18,594,045	0%	68%	32%
Estonia	13,957,296	0%	99%	1%
Cyprus	6,710,028	0%	100%	0%
Bulgaria	5,288,194	0%	89%	11%
Romania	1,788,140	0%	52%	48%
Slovenia	1,582,378	0%	93%	7%
Total	7248516828.31	100%	99%	1%

Source: ICF calculations based on DCF data as reported in Scientific, Technical and Economic Committee for Fisheries (STECF); *The 2014 Annual Economic Report on the EU fishing Fleet* (STECF 14-16), 2014.

Total costs in the sea fisheries sector include wages and salaries of crew, unpaid labour, energy costs, repair and maintenance costs, other variable costs, other non-variable costs and annual depreciation. Total costs arising in the EU fishing fleet in 2012²⁵⁹ amounted to €6,412 million. Crew wages made up the highest share of total costs (more than 30%) in Estonia,

²⁵⁹ This figure excludes BG, HR, CY and MT which data are considered unreliable according to the 2014 AER.

France, Ireland and Portugal, while these costs were lowest in (below 15%) in Finland, Lithuania, Malta and Sweden.

Table 4: Total cost and share of different costs by Member State (2012), by share of total EU revenue

Country	Total cost (€)	Share of total EU revenue	Wages and salaries of crew	Unpaid labour value	Energy cost	Repair & maintenance	Other variable costs	Other non-variable costs	Annual depreciation costs
Spain	1,773,087,600	26%	28%	5%	24%	7%	22%	7%	7%
France	1,069,585,602	15%	35%	0%	21%	8%	11%	12%	14%
Italy	865,633,047	12%	22%	5%	31%	5%	13%	4%	21%
United Kingdom	822,290,695	12%	27%	1%	23%	10%	19%	13%	7%
Greece	458,839,521	7%	16%	20%	24%	9%	18%	2%	12%
Portugal	408,256,774	6%	35%	0%	22%	9%	11%	4%	19%
Netherlands	370,092,234	5%	23%	2%	28%	17%	8%	10%	11%
Denmark	339,889,971	5%	20%	11%	17%	11%	9%	6%	27%
Ireland	246,034,467	4%	36%	0%	21%	11%	11%	9%	11%
Germany	145,278,238	2%	27%	7%	21%	12%	8%	11%	13%
Sweden	126,725,788	2%	13%	11%	27%	16%	8%	7%	18%
Belgium	85,945,555	1%	27%	3%	32%	6%	13%	8%	11%
Poland	48,108,854	1%	31%	3%	29%	8%	10%	11%	7%
Finland	37,437,027	1%	12%	16%	29%	13%	8%	14%	9%
Croatia	30,004,005	0%	28%	3%	25%	9%	11%	9%	16%
Lithuania	37,139,507	1%	12%	0%	31%	16%	30%	5%	6%
Latvia	21,516,478	0%	18%	0%	23%	6%	17%	29%	6%
Malta	18,822,264	0%	11%	11%	23%	8%	15%	2%	30%
Cyprus	14,909,407	0%	3%	8%	20%	12%	30%	1%	25%
Estonia	12,536,201	0%	39%	0%	25%	13%	9%	4%	10%
Bulgaria	4,957,406	0%	27%	2%	25%	8%	31%	3%	4%
Slovenia	2,189,631	0%	43%	16%	13%	8%	10%	1%	9%

Country	Total cost (€)	Share of total EU revenue	Wages and salaries of crew	Unpaid labour value	Energy cost	Repair & maintenance	Other variable costs	Other non-variable costs	Annual depreciation costs
Romania	743,192	0%	37%	5%	22%	8%	17%	1%	9%
Total	6,412,490,860	100%	28%	3%	24%	9%	15%	9%	13%

Source: ICF calculations based on DCF data as reported in Scientific, Technical and Economic Committee for Fisheries (STECF); *The 2014 Annual Economic Report on the EU fishing Fleet* (STECF 14-16), 2014.

4. Employment data and trends in the fisheries sector

Table 5: Total employment in the fisheries sector, absolute and proportional changes in the period 2008 - 2014, by proportional change

Country	2008*	2014	Absolute change	Proportional change
Netherlands	630	1,805	1,175	187%
Poland	2,363	4,006	1,643	70%
Finland	626	1,045	420	67%
United Kingdom	8,177*	11,027	2,850	35%
Romania	1,290	1,604	314	24%
Croatia	5,369	5,732	363	7%
France	8,231	7,494	-737	-9%
Sweden	1,872	1,671	-200	-11%
Greece	11,218	9,179	-2,039	-18%
Italy	27,552*	18,846	-8,706	-32%
Spain	41,225	27,968	-13,257	-32%
Portugal	16,795	11,177	-5,618	-33%
Germany	4,903	3,050	-1,853	-38%
Estonia	935	516	-420	-45%
Malta	395	214	-181	-46%
Lithuania	3,222	902	-2,320	-72%
Total	101,125*	108,482	7,357	7%

Source: EU-LFS [stapro] *UK's earliest data is from 2009, Italy's earliest data is from 2011

The share of sea fisheries employment of total employment is relatively low in the majority of Member States and stands below 0.1% in Belgium, Germany, France, the Netherlands, Poland, Romania, Slovenia, Sweden and the UK. Based on DCF data, the sector makes up the most significant share of overall national employment in Greece (0.7%), Bulgaria (0.5%), Portugal (0.4%) and Cyprus (0.3%). For the EU28 as a whole the share of employment in the sea fisheries sector of total employment is 0.08%. The employment picture and reasons for employment trends are complex and depend on the region and the size and nature of the existing fleet and its links to the above mentioned factors (e.g. mainly small scale, large scale or distant water etc.). Labour or occupational safety and health legislation was not identified as having played a significant role in influencing employment trends in the sector by stakeholders consulted for this study²⁶⁰.

Overall, employment in the sector has declined significantly in recent decades (in 1995/6 employment stood at around 260,000). This is mainly due to factors such as a decline in fish stocks, quota systems, increasing international competition but also an aging workforce, and a lack of attractiveness of the sector among young and skilled workers, which leads to shortage of staff in some Member States²⁶¹. However, as shown by table 5, there are considerable difference between the Member States. In the Netherlands, Poland, Finland, United Kingdom, Romania and Croatia, the number of fishermen have increased between 7-24 %.²⁶²

Table 6: Employment, self-employment and family workers in the fisheries sector in 2014, by share of category out of total employees

Row Labels	Employee	Family worker	Total self employed	Self-employed with employees (out of total employees) ²⁶³	Self-employed without employees (out of total employees)
Lithuania	100%	0%	0%	0%	0%
Portugal	71%	1%	27%	9%	18%
Spain	67%	2%	29%	13%	16%
Germany	65%	0%	35%	31%	4%
Croatia	62%	0%	38%	18%	20%
Italy	56%	0%	44%	14%	30%
Poland	56%	17%	27%	0%	27%
Romania	51%	7%	42%	13%	29%

²⁶⁰ ICF Study, p. 17

²⁶¹ British Safety Council (2015), Safety Management, the troubled waters of the European Fishing Industry, <https://sm.britsafe.org/troubled-waters-european-fishing-industry>. Also reported to be the case in Belgium where finding an appropriate crew remains a challenge for many vessel owners. Young potential fishermen prefer to work for dredging companies or in the tourism industry. Source: 2015 Annual Economic Report on the EU Fishing Fleet, p. 25.

²⁶² ICF Study p. 40

²⁶³ This metric from the EU-LFS indicates the share of self-employed individuals who have employees. As the only available relevant data, this has been used as a proxy for the share of self-employed working on the same vessel with employees.

Row Labels	Employee	Family worker	Total self employed	Self-employed with employees (out of total employees) ²⁶³	Self-employed without employees (out of total employees)
France	49%	8%	43%	17%	26%
United Kingdom	49%	7%	44%	18%	26%
Finland	39%	0%	61%	0%	61%
Estonia	36%	6%	58%	17%	41%
Netherlands	27%	0%	73%	37%	36%
Sweden	20%	0%	80%	8%	72%
Malta	22%	0%	78%	0%	78%
Greece	3%	7%	90%	15%	76%
EU28	55%	3%	41%	14%	27%

Source: LFS data available by special request [stapro].

The share of self-employment is greatest in Greece (90%), Sweden (80%), Malta (78%) and Netherlands (73%) and is lowest in Poland (27%). Among the self-employed, the Netherlands (37%) and Germany (31%) feature the highest share of self-employed with employees, whereas their share is lowest in Finland, Malta, Poland and Lithuania, where there are none (0%). For the EU as a whole the share of self-employed fishermen stands at 41% of total individuals working in the sector. Between 2008 and 2014, EU-LFS data records stability in the share of self-employment in the sector at 41%²⁶⁴.

Part time employment in the sea fisheries sector

The share of fishermen working part-time varies significantly between Member States. Data from the EU-LFS shows that the overall share of part-time employment stood at 11% in 2014. The shares of part-time employment were highest in the Netherlands (24%), which has an overall high share of part-time employment in most sectors. Romania has a high share of part-time employment (23%) as has Finland (20%). Part-time employment is the lowest in Poland Greece and France, where it is between 4-7% of the total employment. There were no significant changes in the share of part-time employment in the Member States for which such data are available between 2008 and 2014²⁶⁵.

Table 7 Share of part-time employment in the fisheries sector (2014), in order of share of the share of part-time employment

Country	Share of part-time employment
Netherlands	24%
Romania	23%

²⁶⁴ ICF study, p. 21

²⁶⁵ ICF study p. 27

Country	Share of part-time employment
Finland	20%
Germany	17%
Estonia	17%
Italy	14%
Portugal	13%
Spain	12%
Malta	12%
Sweden	12%
Lithuania	11%
United Kingdom	10%
Croatia	8%
France	7%
Greece	5%
Poland	4%
EU28	11%

Source: EU-LFS and ICF own calculations

According to EU-LFS data, in 2014, 42% of the EU-28 workforce was permanently employed. Lithuania had the highest share of permanent workers (75%), whereas the countries with the highest proportion of temporary workers are Spain (22%), Lithuania (25%) and Poland (36%). The reasons for the high share of ‘not applicable’ answers are unclear and this data must therefore be treated with caution. It should also be noted that EU-LFS temporary employment data includes fixed-term employment as well as agency work. Disaggregated figures for these two different types of employment are not available.

Table 8: Share of permanent vs temporary employment (EU-LFS data 2014) by share of temporary employment

Row Labels	Not applicable	Permanent	Temporary
Poland	44%	19%	36%
Lithuania		75%	25%
Spain	33%	45%	22%
Portugal	29%	54%	17%
Finland	61%	28%	11%

Row Labels	Not applicable	Permanent	Temporary
Croatia	38%	53%	8%
United Kingdom	51%	41%	8%
Germany	35%	51%	7%
France	51%	43%	6%
Italy	44%	49%	6%
Netherlands	73%	21%	6%
Sweden	80%	16%	4%
Estonia	64%	36%	
Greece	97%	3%	
Malta	100%		
Romania	49%	51%	
EU28	45%	42%	12%

Source: EU-LFS [temp]

Annex 6: Background on the international and EU legislation on living and working conditions for fisherman

Existing International Agreements in the sector

Prior to the ILO Work in Fishing Convention which led to the Agreement signed by the European social partners, the ILO had already passed several Conventions. These texts concerned hours of work, the minimum age, medical examination, articles of agreement, competency certificates, accommodation of crews and vocational training.²⁶⁶ These Conventions were ratified by some Member States with a large fleet, but not by all EU Member States. ILO Convention C.188 consolidates the existing ILO provisions and adapted them to the changes which have occurred since the ILO Conventions were adopted 40 years ago. The ILO Conventions revised by the ILO Convention no. 188 are still in force, as ILO Convention no. 188 has not yet entered into force. According to the provisions of the Convention, it will enter into force, one year after it has been ratified by 10 ILO Member States of which 8 coastal states²⁶⁷. At this moment five ILO Member States have ratified this Convention²⁶⁸. None of the EU Member States have ratified the Convention, despite the fact that, the Council adopted a decision in 2010 inviting Member States to make efforts to take the necessary steps to deposit their instrument of ratification of ILO Convention n° 188 as soon as possible, preferably before 31 December 2012²⁶⁹.

Another important international instrument is the Cape Town Agreement of 2012 of the International Maritime Organisation (IMO). This Agreement has been concluded to enable the implementation of the Torremolinos International Convention for the Safety of Fishing Vessels signed in 1977 and its Protocol of 1993²⁷⁰. The Torremolinos Convention has not entered into force as an insufficient number of States ratified the Convention and its Protocol. These two texts aimed at setting safety standards of fishing vessels of 24 meters and over which closely relate to health and safety and working conditions of fishers. At the EU level, the Torremolinos Protocol has been implemented through the Council Directive 97/70/EC²⁷¹ thus uniform safety standards of vessels of 24 meters and over already exist in the EU. The Cape Town Agreement was another attempt to set worldwide standards. It amended certain provisions of the Torremolinos Convention to introduce more flexibility in view of the implementation difficulties faced by many States.

As the Cape Town Agreement concerns a subject of exclusive EU competence, Member States could not decide to ratify it on their own. As a result, in February 2014, a Council

²⁶⁶ ILO (1959) Minimum Age (Fishermen) Convention, No. 112, ILO (1959) Medical Examination (Fishermen) Convention, No. 113, ILO (1959) Fishermen's Articles of Agreement Convention, No. 114, ILO (1966), ILO (1966) Accommodation of Crews (Fishermen) Convention, No. 126, ILO (1966).

²⁶⁷ Article 48 of ILO Convention no. 188.

²⁶⁸ Argentina, Bosnia and Herzegovina, Congo, Morocco, and South Africa

²⁶⁹ Council Decision 2010/321/EU of 7 June 2010 authorising Member States to ratify, in the interests of the European Union, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention No 188), OJ L 145, 11.6.2010, p. 1

²⁷⁰ The Cape Town Agreement is a basic set of safety measures for larger high seas fishing vessels and contains provisions in relation to the vessel on stability, construction, watertight integrity and equipment, machinery and electrical installations, fire protection and fire-fighting, protection of the crew, lifesaving appliances, emergency procedures, musters and drills, ship-borne communications and navigational equipment.

²⁷¹ Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, OJ L 34, 9.2.1998, p. 1

Decision was adopted to authorise Member States to sign, ratify or accede to Cape Town Agreement within two years. At present, available information suggests that only the Netherlands has done so.

The International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel (STCW-F)²⁷², adopted in 1995 under the auspices of the International Maritime Organization (IMO), lays down minimum training standards for personnel on board fishing vessels. It represents a significant contribution to the promotion of safety at sea and to the protection of the marine environment. The EU advocates broad ratification of the Convention by its Member States.

The Convention entered into force in 2012, after being ratified by the required fifteen parties. Only five EU Member States have ratified it so far: Denmark, Spain, Latvia, Lithuania and Poland. While the EU cannot accede to the Convention, which is only open to individual States, its authorisation is required for EU Member States to ratify it, since a number of its provisions fall under exclusive EU competence.

Current EU provisions

EU labour law Directives, such as the Written Statement Directive²⁷³, the Working Time Directive²⁷⁴, and the Temporary Agency workers Directive²⁷⁵ are applicable to all workers including to fishermen.

The Written Statement Directive (91/533/EEC) establishes the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The general Working Time Directive provides for minimum standards on working time to protect workers' health and safety.

The Working Time Directive (2003/88/EC) contains separate provisions for workers on board sea fishing vessels. According to Article 21 of the Directive the general limits for daily and weekly rests and breaks do not apply to these workers. Instead, adequate rests has to be ensured and working time needs to be limited to an average working week of 48 hours calculated within a reference period of twelve months. This Article establishes specific daily and weekly working time or rest limits for these workers.

The Directive on Temporary Agency Work (2008/104/EC) defines a general framework applicable to the working conditions of temporary workers in the European Union. The Directive aims to guarantee a minimum level of effective protection to temporary workers and to contribute to the development of the temporary work sector as a flexible option for employers and workers.

²⁷² The International Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel (STCW-F), 1995 entered into force in September 2012, <https://www.imo.org/en/OurWork/HumanElement/Pages/STCW-F-Convention.aspx>.

²⁷³ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p. 32–35

²⁷⁴ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19

²⁷⁵ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, O.J. L 327, 5.12.2008, p. 9

With regard to social security, the EU Regulation on coordination of social security applies also to fishermen. This Regulation lays down the rules how to make work these different systems together. The Member States are competent concerning their own social security systems and under which conditions benefits are given. The regulation applies to the EU nationals and to the third country national *legally residing* in the EU.

The existing EU legislation on occupational safety and health (OSH), applies to all economic sectors, both public and private sector.²⁷⁶ The Framework Directive²⁷⁷ and, where relevant, its individual directives²⁷⁸ apply in full to the workers in the fishing sector. Two EU OSH Directives address specific issues within the maritime sector – Directive 92/29/EEC²⁷⁹ (Medical treatment on board vessels) and Directive 93/103/EC²⁸⁰ (Work on board fishing vessels). The latter was specifically designed having into account a number of OSH concerns in the sea fishing sector.

Two specific Directives were introduced to tackle the specific risks and to promote the occupational health and safety of fishermen. Directive 93/103/EEC²⁸¹ defining the minimum safety and health requirements for work on board fishing vessels and Directive 92/29/EEC²⁸² on the minimum safety and health requirements for improved medical treatment on board vessels.

Directive 93/103/CE applies to new fishing vessels (building contract placed after 23 November 1995) with a length between perpendiculars of 15 m or over and to existing fishing vessels with a length between perpendiculars of 18 m or over. In addition EU OSHA produced a Risk assessment for small fishing vessels²⁸³.

Directive 92/29/EEC applies to any vessel, regardless of its size, flying the flag of a Member State or registered under the plenary jurisdiction of a Member State, seagoing or estuary-fishing, publicly or privately owned²⁸⁴. It aims to ensure that the vessel carries appropriate medicines and anti-dotes on board and that workers on board of the vessel can obtain necessary medical treatment.

The agreement

The agreement contains minimum requirements with regard to living and working conditions for fishermen on board of fishing vessels flying the flag of an EU Member States. Some of the provisions of the agreement do not change the situation vis-à-vis the current *acquis*. Other

²⁷⁶ Article 2(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1

²⁷⁷ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p.1.

²⁷⁸ Within the meaning of Article 16 (1) of Directive 89/391/EEC.

²⁷⁹ COUNCIL DIRECTIVE 92/29/EEC, of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, OJ L 113, 30.4.1992, p. 19.

²⁸⁰ Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) OJ L 307, 13.12.1993, p. 1)

²⁸¹ Directive 93/103/CE of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels, OJ L 307, 13.12.1993, p. 1

²⁸² Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, OJ L 113, 30.4.1992, p. 19.

²⁸³ <https://osha.europa.eu/en/tools-and-publications/publications/factsheets/38>

²⁸⁴ Article 1(a) of Directive 92/29/EEC

provisions such as for example the provisions with regard minimum age, working time, fisherman's work agreement, medical certificate, repatriation, right to food and water on board, medical treatment on board and ashore are new compared to the current acquis. As these provisions are expected to have an impact on the legislation and practice of the Member States who do not have the same or more favourable provisions in place, they are analysed in the main text of this report.

The agreement contains an Annex II which contains technical specifications on occupational safety and health of fishermen concerning accommodation, sleeping rooms, sick bay, recreational rooms, laundry facilities, preparation and storage of food. Specific numerical dimensions are provided for vessels of 24 meters and over. These provisions will apply to vessels for which:

The building or major conversion contract has been placed on or after the date of the entry into force of the agreement; or

(ii) the building or major conversion contract has been placed before the date of the entry into force of the agreement, and which is delivered three years or more after that date; or (iii) in the absence of a building contract, on or after the date of the entry into force of the agreement:

(a) the keel is laid, or

(b) construction identifiable with a specific vessel begins, or

(c) assembly has commenced comprising at least fifty tonnes or one percent of the estimated mass of all structural material, whichever is less;

For fishing vessels normally remaining at sea for less than 24 hours where the fishermen do not live on board the vessel in port. The national authorities, after consulting the national sectoral social partners, might permit variations to the provisions of this Annex. In the case of such vessels, the competent authority shall ensure that the fishermen concerned have adequate facilities for resting, eating and sanitation purposes. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable. Hence the Annex II applies to all new fishing vessels, irrespective of size or existing vessels which are being converted:

Legal analysis - Provisions of Annex II of the Agreement

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
General provisions ²⁸⁶		DE, EE, EL, ES, FR, HR, IE	LV, UK ²⁸⁷
<p>2(b) new fishing vessel means, a vessel for which:</p> <p>(i) the building or major conversion contract has been placed on or after the date of the entry into force of the Agreement; or</p> <p>(ii) the building or major conversion contract has been placed before the date of the entry into force of the Agreement, and which is delivered three years or more after that date; or</p> <p>(iii) in the absence of a building contract, on or after the date of the entry into force of the Agreement:</p> <p>(a) the keel is laid, or</p> <p>(b) construction identifiable with a specific vessel begins, or</p> <p>(c) assembly has commenced comprising at least fifty tonnes or one percent of the</p>	<p>Article 2 (b) of Directive 93/103/EC</p> <p>New fishing vessel: a fishing vessel with a length between perpendiculars of 15 meters or over and for which, on or after the date specified in the first subparagraph of Article 13 (1):</p> <p>(i) the building or major conversion contract is placed; or</p> <p>(ii) the building or major conversion contract has been placed before the date specified in the first subparagraph of Article 13 (1) and which is delivered three or more years after that date; or</p> <p>(iii) in the absence of a building contract:</p> <p>- the keel is laid, or</p>		

²⁸⁵ No information on this annex provided by the IT, NL, SI, SE, PL, PT, and RO authorities.

²⁸⁶ FI: no information

²⁸⁷ UK: Some of the requirements are covered by the current legislation. UK national authorities stated in the context of the external study that the current legislation needs to be updated and this might be the opportunity to do this

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
estimated mass of all structural material, whichever is less;	<ul style="list-style-type: none"> - construction identifiable with a specific vessel begins, or - assembly has commenced, comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is the lesser; 		
(c) existing vessel means, a vessel that is not a new fishing vessel.	<p>Article 2 (c) of Directive 93/103/EC</p> <p>Existing fishing vessel: any fishing vessel with a length between perpendiculars of 18 metres or over and which is not a new fishing vessel;</p>		
6. Fishermen working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.	n/a		
Planning and control ²⁸⁸		DE, EE, EL, FR, HR, ES ²⁸⁹ , LV, UK ²⁹⁰	IE
8. The competent authority shall satisfy itself that, on every	None		

²⁸⁸ FI: no information

²⁸⁹ ES: legislation is pending if the agreement is ratified

²⁹⁰ UK some adjustments necessary in case of flag change.

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
<p>occasion when a vessel is newly constructed or the crew accommodation of a vessel has been reconstructed, such vessel complies with the requirements of this Annex.</p> <p>The competent authority shall, to the extent practicable, require compliance with this Annex when the crew accommodation of a vessel is substantially altered and, for a vessel that changes the flag it flies to the flag of the Member State, require compliance with those requirements of this Annex that are applicable in accordance with paragraph 3.</p>			
<p>9. For the occasions noted in paragraph 8, for vessels of 24 metres in length and over, detailed plans and information concerning accommodation shall be required to be submitted for approval to the competent authority, or an entity authorized by it.</p>	None		
<p>10. For vessels of 24 metres in length and over, on every occasion when the crew accommodation of the fishing vessel has been reconstructed or substantially altered, the competent authority shall inspect the accommodation for compliance with the requirements of the Agreement, and when the vessel changes the flag it flies to the flag of the Member State, for compliance with those requirements of this Annex that are applicable in accordance with paragraph 3. The competent authority may carry out additional inspections of crew accommodation at its discretion.</p>	None		
<p>11. When a vessel changes flag to a Member State flag or is</p>	None		

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
<p>registered under a Member State's plenary jurisdiction, any alternative requirements which the competent authority of a non EU Member State whose flag the ship was formerly flying, may have adopted in accordance with paragraphs 15, 39, 47 or 62 of Annex III to C.188, cease to apply to the vessel</p>			
<p>Design and construction (headroom, not less than 200 cm for vessels of 24 meters and over)</p>		DE, EE, EL, ES, FR, HR, IE, LV, UK	
<p><i>Openings into and between accommodation spaces no direct openings into sleeping rooms from fish rooms and machinery spaces,</i></p>		DE, EE, EL, FR, HR, ES IE, LV, UK	
<p><i>Insulation</i></p>		DE, EE, EL, ES, FI, FR, IE, LV	HR, UK
<p><i>Other, natural, reading²⁹¹ and emergency lighting privacy of sleeping spaces.</i></p>		DE, EE, EL, ES, FR, IE, LV, UK	HR
<p><i>Adequate Floor area specific dimensions for vessels of 24 meters and over</i></p>		DE, EE, FI, FR, IE,	EL, ES ²⁹² , HR, LV, UK
<p>Persons per sleeping room</p>		DE, EE, ES, FI, FR, IE, LV, UK	EL, HR
<p><i>Other Sleeping rooms and Sanitary installations</i></p>		DE, EE, EL, ES, FI,	HR

²⁹¹ No information FI

²⁹² Specific numerical dimensions not met

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
	<i>specific dimensions for vessels of 24 meters and over</i>	FR, IE, LV, UK ²⁹³	
	Laundry facilities	DE, EE, EL, ES, FI, FR, IE, UK	HR, LV
	Facilities for washing drying and ironing for vessels 24 meters and over		
	Facilities for sick and injured fishermen	DE, EE, FI, FR, IE, LV	EL, ES ²⁹⁴ , HR, UK
	Other facilities (places for hanging foul-weather gear, personal protective equipment, bedding mess utensils.	DE, EE, FI, FR, IE, LV, UK	EL, HR
	Recreational facilities (vessels of 24 meters and over)	DE, EE, EL, FI, FR, IE	ES ²⁹⁵ , FI, HR, LV, UK
	Communication facilities²⁹⁶	DE, EE, FR, IE	EL, ES, HR, UK
	Galley and food storage facilities cooking equipment, separate galley for vessels 24 meters and over	DE, EE, ES, FI, FR, IE	EL, HR, UK
	Food and potable water	DE, EE, FI, FR, HR, IE, LV	EL, ES ²⁹⁷ , UK ²⁹⁸

²⁹³ UK: some fine-tuning might be needed for the requirements of the vessels of 24 meters and over.

²⁹⁴ ES: not compulsory, and not applicable to vessels out of port for less than 36 hrs.

²⁹⁵ ES: no specific regulations for vessels of 24 meters and over and not applicable to vessels out of port for less than 36 hrs.

²⁹⁶ FI: No information

²⁹⁷ ES: food and water has to be on board.

²⁹⁸ UK additional legislation is required in particularly with regard to value, quantity, and quality, taking into account religious and cultural practices.

Clause ²⁸⁵	Relevant EU law	MS having more favourable or equal protective standards	MS having less favourable or no standards
Clean and habitable conditions		DE, EE, EL, ES, FI, FR, HR, IE, UK	LV

Source: external study, table 20