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Subject: COUNCIL DIRECTIVE implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014

COUNCIL DIRECTIVE (EU) 2018/...

of ...

**implementing the Agreement
concluded by the European Community Shipowners' Associations (ECSA)
and the European Transport Workers' Federation (ETF)
to amend Directive 2009/13/EC in accordance with the amendments
of 2014 to the Maritime Labour Convention, 2006,
as approved by the International Labour Conference on 11 June 2014**

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2), in conjunction with points (a), (b) and (c) of Article 153(1), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), management and labour ('the social partners') are able to jointly request that agreements they conclude at Union level be implemented by a Council decision, on a proposal from the Commission.
- (2) Council Directive 2009/13/EC¹ implemented the agreement concluded on 19 May 2008 by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to incorporate the mandatory provisions of the Maritime Labour Convention, 2006 ('the MLC') of the International Labour Organization (ILO) into Union law, in order to update the Union legislation in force with those standards of the MLC which were more favourable for seafarers. It aimed at improving working conditions for seafarers, particularly as regards employment agreements, working hours, repatriation, careers and skill development, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures.

¹ 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).

- (3) Following international expert meetings, the ILO launched a process to amend the MLC in order to address concerns relating, on the one hand, to the abandonment of seafarers and financial security and, on the other, to claims related to death or long-term disability of seafarers. The Special Tripartite Committee established under the MLC adopted two amendments on those issues at its meeting from 7 to 11 April 2014. Parts of the rules subject to the amendments fell within the Union's competence and concerned matters on which the Union had adopted rules, in particular in social policy and transport. On 26 May 2014 the Council therefore adopted Decision 2014/346/EU¹, setting out the position to be adopted on behalf of the Union at the 103rd session of the International Labour Conference (ILC). The position of the Union was to support the approval of the amendments to the MLC Code ('the 2014 amendments to the MLC').

¹ Council Decision 2014/346/EU of 26 May 2014 on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention (OJ L 172, 12.6.2014, p. 28).

- (4) The 2014 amendments to the MLC were approved by the ILC at its 103rd session in Geneva on 11 June 2014 and entered into force on 18 January 2017. They relate to providing an effective financial security system to protect seafarers' rights in the event of abandonment and to assure compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. They improve and optimise the existing system for protecting seafarers, including the obligation for ships to carry documentary evidence on board of the financial security system and to extend the system to cover two new situations of abandonment. Those situations relate to cases in which seafarers have been left without the necessary maintenance and support or to cases in which the shipowner has unilaterally severed its ties with the seafarer, including failure to pay contractual wages for a period of at least two months.
- (5) On 5 December 2016 the social partners in the maritime transport sector – the ECSA and the ETF – concluded an agreement ('the social partners' agreement') to amend Directive 2009/13/EC in accordance with the 2014 amendments to the MLC. On 12 December 2016 they requested that the Commission present a proposal for a Council directive under Article 155(2) of the TFEU in order to implement that agreement.

- (6) The social partners' agreement reproduces the content of the mandatory provisions of the 2014 amendments to the MLC. The first amendment, on the financial security system in the event of abandonment of the seafarer, relates both to health and safety and to working conditions, and is thus covered by points (a) and (b) of Article 153(1) of the TFEU. The second amendment, on the requirements of the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, is covered by point (c) of Article 153(1) of the TFEU, on social security and social protection of workers. The social partners' agreement therefore relates to matters covered by Article 153 of the TFEU and can be implemented by a Council decision on a proposal from the Commission, in accordance with Article 155(2) of the TFEU. For the purposes of Article 288 of the TFEU, the appropriate instrument to implement the social partners' agreement is a directive.
- (7) In accordance with the Commission communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, the Commission has assessed the representative status of the signatory parties and the legality of each clause of the social partners' agreement.
- (8) The social partners' agreement amends the agreement concluded on 19 May 2008 between ECSA and the ETF on the MLC, annexed to Directive 2009/13/EC, and incorporates into that Directive the 2014 amendments to the MLC in order to improve the working conditions, health and safety and social protection for seafarers on board ships flying the flag of a Member State.

- (9) In amending Directive 2009/13/EC, the social partners' agreement will bring the mandatory provisions of the 2014 amendments to the MLC, which are already covered by the MLC supervisory system, within the scope of Directive 2013/54/EU of the European Parliament and of the Council¹ and of the Union law supervisory and monitoring system, including the jurisdiction of the Court of Justice of the European Union. This is likely to result in greater compliance by Member States and shipowners.
- (10) Without prejudice to the provisions of the social partners' agreement on follow-up and review by the social partners at Union level, the Commission will monitor the implementation of this Directive and of the social partners' agreement.
- (11) The Member States are able to entrust social partners with the implementation of this Directive where the latter jointly request this and provided that the Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.
- (12) Pursuant to Article 155(2) of the TFEU, the Commission has informed the European Parliament by sending it the text of its proposal for this Directive.

¹ Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006 (OJ L 329, 10.12.2013, p. 1).

- (13) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, and in particular Article 31 thereof.
- (14) Since the objectives of this Directive, namely to improve the working conditions, health and safety and social protection of workers in the maritime transport sector, which is a cross-border sector operating under the flags of different Member States, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (15) Directive 2009/13/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements the agreement concluded between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on 5 December 2016 to amend Directive 2009/13/EC in accordance with the 2014 amendments to the MLC.

Article 2

In line with the social partners' agreement, the Agreement concluded by the ECSA and the ETF on the Maritime Labour Convention, 2006, set out in the Annex to Directive 2009/13/EC is amended in accordance with the Annex to this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [two years after the date of its entry into force]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
3. Member States may entrust social partners with the implementation of this Directive where social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at ...,

For the Council

The President

ANNEX

In the Annex to Directive 2009/13/EC, the Agreement concluded by the ECSA and the ETF on the Maritime Labour Convention, 2006, is amended as follows:

- (1) in the heading 'Standard A2.5 – Repatriation', 'A2.5' is replaced by 'A2.5.1'.
- (2) the following Standard is inserted:

'Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Agreement or the terms of the seafarers' employment agreement, the shipowner:
 - (a) fails to cover the cost of the seafarer's repatriation; or
 - (b) has left the seafarer without the necessary maintenance and support; or
 - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member State shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organisations concerned.
4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member State.
5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.
6. Each Member State shall require that ships that fly its flag, and which are required under national laws to carry a Maritime Labour Certificate or do so at the request of the shipowner, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:
- (a) name of the ship;
 - (b) port of registry of the ship;
 - (c) call sign of the ship;
 - (d) IMO number of the ship;
 - (e) name and address of the provider or providers of the financial security;
 - (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation from the financial security provider that the financial security meets the requirements of this Standard A2.5.2.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 of this Standard.
9. Having regard to Regulation 2.5, assistance provided by the financial security system shall be sufficient to cover the following:
 - (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
 - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10 of this Standard; and
 - (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.
12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.
13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.'

(3) 'Standard A4.2 – Shipowners' liability' is amended as follows:

(a) in the heading, 'A4.2' is replaced by 'A4.2.1';

(b) the following paragraphs are added:

'8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

- (b) there shall be no pressure to accept a payment less than the contractual amount;
 - (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
 - (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
 - (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.
9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.
11. Each Member State shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.
13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.
14. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:
 - (a) name of the ship;

- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.1.

(4) the following standard is inserted:

'Standard A4.2.2 – Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organisations concerned.
 3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.'
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