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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 April 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a COUNCIL DIRECTIVE implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives 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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Delegations will find attached document COM(2016) 235 final.

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Brussels, 29.4.2016
COM(2016) 235 final

2016/0124 (NLE)

Proposal for a

COUNCIL DIRECTIVE

implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives 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

(Text with EEA relevance)

{SWD(2016) 143 final}

{SWD(2016) 144 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In 2002, the ILO started discussions on a global scale on a complete and up-to-date set of international standards for the fishing sector, in order to guarantee proper protection for fishermen at global level. This resulted in the adoption of the Work in Fishing Convention in 2007¹. So far, France is the only EU Member State to have ratified this Convention².

In 2007, the Commission launched the first phase of consultation with EU social partners pursuant to Article 154 the Treaty on the Functioning of the EU (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, 2007’³. The General Confederation of Agricultural Cooperatives in the European Union (‘Cogeca’), the European Transport Workers’ Federation (‘ETF’), and the Association of National Organisations of Fishing Enterprises in the European Union (‘Europêche’) started negotiating in 2009. An Agreement was concluded on 21 May 2012, and later amended on 8 May 2013. On 10 May 2013, EU social partners requested the Commission to implement their Agreement through a Council decision in accordance with Article 155(2) TFEU.

The purpose of this proposal is to implement the Agreement concerning the implementation of the Work in Fishing Convention, 2007, of the International Labour Organisation (ILO), between Cogeca, ETF, and Europêche.

With this proposal, the Commission aims to improve the working and living conditions for fishermen working on vessels flying the flag of an EU Member State, by establishing a consolidated legal framework which is suited to working conditions for the sea fishing sector.

- **Consistency with existing policy provisions in the policy area**

This initiative fits within the Commission’s priority for a deeper and fairer single 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 jobs⁴. This includes occupational safety and health protection, working time, social protection, and rights connected to the employment contract.

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) legislation. For matters not covered by EU legislation, such as the right to medical treatment ashore, the right to repatriation and the medical certificate certifying the fitness for work of fishermen, EU Member States have introduced very different standards.

¹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188.

² France has ratified the Convention in October 2015. Norway, which is an EEA member, ratified the Convention in January 2016.

³ COM(2007) 591 final.

⁴ President Juncker’s State of the Union address in the European Parliament on 9 September 2015.

- **Consistency with other Union policies**

The *ex post* evaluation of the EU OSH *acquis* is ongoing and a number of key issues for the revision of EU legislation have not been defined yet, namely in relation to the new architecture and exact content of the provisions of the future EU 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 EU 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 living and working conditions through the Common Fisheries Policy (CFP)⁵, which aims at ensuring that fishing and aquaculture activities contribute to long-term environmental, economic, and social sustainability. Indeed, healthy fish stocks 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) fishing⁶.

Poor 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 conditions. On the other hand, workers on vessels engaged in IUU fishing are vulnerable to exploitation, as there is no way of ensuring decent working conditions on a vessel engaging in illegal activities. 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 option. 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 social partners on the ILO Work in Fishing Convention in EU legislation, the EU will be in a stronger position to promote its implementation in partner countries worldwide.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 155(2) of the TFEU provides that *'Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management*

⁵ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22-61.

⁶ 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, OJ L 286, 29.10.2008, 1–32.

and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed’.

The objective of the Agreement concluded by the Cogeca, ETF and Europêche 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, conditions of service, accommodation and food, occupational safety and health protection and medical care. Article 155(2) therefore constitutes the proper legal basis for the Commission’s proposal.

- **Subsidiarity**

The need for EU action is justified by the fact that sea fishing is a cross-border sector which operates worldwide. Fishing vessels sail under different EU flags, they also operate outside the territorial waters of the EU Member State concerned, in waters under the jurisdiction of other Member States and in international waters. The EU distant-water fleet operates in international waters (high seas) and through bilateral agreements with countries outside the EU.

Despite the Council Decision to authorise EU Member States to ratify the ILO Convention C188⁷, the ratification process has been very slow. Ratification by only some EU Member States would not ensure 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. It would lead to continuing different standards, in particular, on issues which are not yet included in EU legislation, such as medical certificates for fishermen, the right to repatriation, and medical treatment on shore. Different working conditions for fishermen within the EU would continue to exist. In addition, this would lead to different competitive positions between Member States which have ratified the Convention and those which have not. The proposed Directive builds on existing international and EU standards, taking into account the specific work environment in the sector. It ensures a similar level of decent living and working conditions and a level playing field in terms of competitiveness between the EU Member States by bringing about the simultaneous entry into force and uniform transposition in all EU Member States of the standards of the ILO Work in Fishing Convention, 2007 to which it refers. It aligns the situation of fishermen with that of other maritime professions⁸.

- **Proportionality**

The proposed Directive fulfils the requirement for proportionality because it takes a step forward to achieve the objectives set to improve the living and working conditions of workers and provide for a coherent legal framework which lays down minimum standards. It is strictly limited to the transposition into EU law of updated standards contained in the ILO Work in Fishing Convention, 2007. The action is based on an Agreement concluded by employers’ and workers’ representatives in the sector.

⁷ 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. 12–12.

⁸ 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.

It leaves EU Member States the option of keeping or setting more favourable standards for workers and the flexibility to take into account specific features of their national situation. As a consequence, the proposal leaves room for flexibility as regards the choice of concrete implementing measures.

- **Choice of the instrument**

The instrument chosen is a directive. The term ‘decision’ in Article 155(2) TFEU is used in its general meaning in order to enable the legislative instrument to be selected in accordance with Article 288 of the TFEU. It is up to the Commission to propose the most appropriate of the three binding instruments referred to in that Article (a regulation, directive or decision).

Article 296 of the TFEU states that: *‘where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.’*

In this instance, given the type and content of the social partners’ Agreement, it is clear that it is best applied through provisions to be transposed by the Member States and/or the social partners into the Member States’ national law. The most suitable instrument is therefore a Council directive. The Commission also considers that the Agreement should not be incorporated into but annexed to the proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Article 155(1) of the TFEU provides for the social partners at EU level to enter into contractual relations, including agreements, if they want to. The TFEU does not require them to consult other parties beforehand. 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 out⁹.

- **Collection and use of expertise**

An external study was commissioned to support the cost and benefits assessment of the Agreement¹⁰. The consultants identified the relevant authorities and social partners in all Member States and asked for information on the national legislation on living and working conditions in the sea fishing sector and the potential impact they expect from implementing the Agreement.

- **Proportionate impact assessment**

According to the Better Regulation Guidelines¹¹, and in order for the College of Commissioners to take an informed decision, the Commission services have prepared a proportionate impact assessment which also includes an assessment of the representativeness

⁹ http://ec.europa.eu/smart-regulation/guidelines/tool_7_en.htm.

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 SWD(2015) 111 final.

of the signatories and of the legality of the clauses of the Agreement vis-à-vis the EU legal framework.

- *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 broad support amongst those actually concerned.

In accordance with Article 1 of Commission Decision 98/500/EC of 20 May 1998, 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; and

(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. 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 2012.

The Agreement concerns working conditions in sea fisheries, which matches with the sectoral delimitations of the sea fisheries sectoral social dialogue Committee. Therefore, equivalence between the coverage of the Committee and of the Agreement is given. The social partners participating in the Committee are Europêche and Cogeca for the employers' and ETF for the workers'.

For Europêche, the Eurofound representativeness study from 2012 identifies members in 11 EU Member States¹². Two employers' organisations have an observer status (LV and LT).

Cogeca represents the general and specific interests of European agricultural, forestry, fisheries and agri-food cooperatives. It has members linked to sea fisheries in 11 Member States¹³. Considering the membership of both Cogeca and Europêche, it means that on the employers' side, altogether 16 Member States are represented in the committee.

On the workers' side, ETF has membership related to sea-fisheries in 11 Member States¹⁴. This leaves fishermen in 11 Member States¹⁵ not represented. However, 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 Member States, employment is considerably lower). While Ireland, Greece, Romania and Sweden have more than 1 000 fishermen, a very large share of them are self-employed.

¹² BE, DE, DK, ES, FR, EL, IT, NL, PL, SE and UK.

¹³ CY, DE, EE, ES, FR, EL, IE, IT, MT, NL and SI.

¹⁴ BE, BG, DE, DK, ES, FR, IT, NL, PL, PT and UK.

¹⁵ CY, EE, EL, IE, FI, LV, LT, MT, RO, SE, SI.

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 European level, taking into account that the sector is relatively small in Romania. The eight Member States which make up 84 % of the sector in total employment terms and 87 % in terms of full-time equivalent 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 request the Commission to implement it in accordance with Article 155 of the 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. Rather they would arise 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) of the TFEU. The extension of some provisions of the Agreement to the self-employed does not contradict Article 153(1)(a) as the ultimate objective is and enacting condition to extend provisions to the self-employed is to safeguard the health and safety of the workers on board the same vessel. This extension already exists in the current EU OSH *acquis* applicable to this sector. 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.

- *Policy options and assessment of costs and benefits*

The Commission can only accept or reject the signatory parties' request to implement the Agreement by legislative act. It cannot amend the text of the Agreement. It cannot ask the social partners at EU level to implement their Agreement autonomously, as this is the prerogative of the social partners according to Article 155(2) of the TFEU.

Therefore, the Commission can only consider one policy option. The proportionate impact assessment accompanying the proposal assessed this policy option (i.e. the measures laid down in the Agreement), and compared it against the baseline (i.e. the option of no further EU action).

The results of the analysis show that, overall, no significant increase in costs is expected. The costs vary per Member State, depending on the degree to which their national legislation already complies already with the Agreement. Some costs will only occur once (e.g. costs related to the transposition of the Agreement into national legislation) and some will be recurrent (e.g. costs associated to the medical certificates which will need to be renewed periodically, costs for repatriation, etc.).

For Member States which already comply with most provisions of the Agreement, the costs will be limited. For Member States which will need to change some aspects of their national legislation concerning for example medical certification, right of repatriation and risk assessment, the costs per worker or per enterprise remain proportionate, overall, to the objective to be achieved. Overall, the costs for repatriation, medical certificates, and risk assessments are estimated between EUR 1.3 million and EUR 8 million. Taking into account

the sector's annual turnover of EUR 6.9 billion, the costs would amount to a maximum 0.11 % of the total turnover of the sector.

The Agreement will improve living and working conditions in the sea fishing sector concerning working time, minimum age, medical certification, risk assessment, accommodation, food and water on board, and medical treatment on board. It will also create a level playing field within the EU for the sector, by setting minimum standards across the EU.

For employers, a reduction in the incidence of occupational accidents, injuries, and diseases will lead to higher productivity, lower costs for compensation and a reduction in staff turnover. For workers it will lower the risk of accidents and/or diseases. This will reduce the risk of loss of earning capacity. Furthermore, it will enable them to stay longer in the sector. It will also increase the attractiveness of the sector for young and skilled workers.

As regards the national authorities, it will lead to lower social security and healthcare costs. The overall benefits for workers, employers and national authorities are estimated between EUR 1.2 million and EUR 19.7 million over a period of five years.

From the comparison of the options and from the cost-benefit analysis, it can be concluded that the Agreement achieves the objectives set at reasonable cost overall and that implementing it through a directive is appropriate.

- **Regulatory fitness and simplification**

Nearly 90 % of businesses in the sea fishing sector are micro-businesses with only one vessel. Based on the data available, it can be assumed that a significant share of these are owner-operated vessels or vessels operated by a skipper with one or two other self-employed or employees on board. The Agreement does not apply to owner-operators as they are considered to be self-employed.

Due to the specific structure of the sea fishing sector, the impact of the Agreement will mainly be on micro-businesses with employees or where self-employed work alongside employees. However, it is unlikely that their competitiveness will be negatively affected compared to the current situation. Setting minimum standards at EU level will contribute to a level playing field, and therefore improve the competitive position. Better working conditions will lead to improved production, less cost on compensation in case of occupational injury, illnesses or accidents and a reduced rate of staff turnover.

In addition, the Agreement includes the possibility for Member States to progressively implement the Agreement over a period of five years for certain categories of fishermen or vessels.

- **Fundamental rights**

The objectives of this proposal are in line with the 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).

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Without prejudice to the provisions of the Agreement on the follow-up and review by the signatories, the European Commission will, after consulting management and labour at European level, monitor the implementation of the Directive implementing the Agreement. The European Commission will evaluate the Directive five years after its entry into force.

- **Explanatory documents**

Member States must send the Commission the national text transposing the Directive and a correlation table between those provisions and the Directive. The Directive covers many aspects of the living and working conditions of fishermen such as working time, minimum age, the content of the employment agreement, occupational safety and health, medical certificates for fishermen and manning requirements. Hence, the national legislation of Member States concerning matters covered by the proposal is normally contained in a number of different legislative texts (Labour Codes, health and safety legislation, sector-specific non-exhaustive provisions) which will require a systemic approach and interpretation.

The proposal also contains a number of elements not previously covered by EU legislation, such as medical certification, specific details on quality of food and water, and specific elements concerning the accommodation on board fishing vessels. Unambiguous information on the transposition of these new provisions and solutions is needed to ensure compliance with the minimum requirements established by the proposal. It will enable the Commission to ensure the implementation of the Directive's requirements, which are intended to protect workers' safety and health, to provide more flexibility for the undertakings and to foster fair competition between undertakings.

The estimated additional administrative burden of providing explanatory documents is not disproportionate (it is a one-off and should not require many organisations to be involved). The explanatory documents can be drafted more efficiently by the Member States.

In view of the above, it is suggested that the Member States undertake to notify the Commission of their transposition measures by providing one or more documents explaining the relationship between the components of the Directive and the corresponding parts of national transposition instruments.

- **European Economic Area**

The proposed act is an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the specific provisions of the proposal**

The structure of the proposal is as follows:

Article 1

This Article makes the Agreement between the social partners binding, which is the aim of a Council decision in accordance with Article 155(2) of the TFEU.

Article 2

Article 2 states that the Directive provides only for minimum requirements, leaving the Member States free to adopt measures which are more favourable to workers in the area concerned. Its aim is to explicitly ensure that acquired levels of protection for workers and only the most favourable standards of occupational protection apply.

Articles 3 to 6

Articles 3 to 6 contain the usual provisions on transposition into the Member States' national law, including the obligation to provide for effective, proportionate and dissuasive penalties. Article 5 contains a reporting clause. The objective of Article 5 is to monitor the implementation and application of the Directive in the Member States, in relation to the living and working conditions in the sector and carry out an evaluation. Data regarding the number of accidents, occupational injuries and health problems in the sector will be examined in this context.

Article 6 refers to the date of entry into force of the Directive. Article 7 specifies the addressees.

Detailed explanation of the provisions of the Annex to the proposal

Article 1 (Definitions)

The Agreement defines the meaning of the following terms for its purposes: a) fishing operations, b) commercial fishing, c) competent authority, d) consultation, e) fishing vessel owner or owner, f) fisherman, g) fisherman's work agreement, , h) fishing vessel or vessel, i) length, j) length between perpendiculars, k) skipper, l) recruitment and placement services, and m) private employment agency. Paragraph 2 sets out the meaning of these terms for the purpose of the Agreement.

Article 2 (Scope)

Article 2 states that the Agreement applies to all fishermen employed on board of a fishing vessel engaged in commercial fishing operations, which is registered in or flying the flag of an EU Member State. The Agreement also applies to self-employed fishermen working alongside workers on the same vessel, in order to ensure the protection of the overall health and safety of the workers on the same vessel. This extension to the self-employed is in accordance with current EU legislation. Article 2(2) establishes that in case of doubt as to whether a fishing vessel is engaged in commercial operations, this must be determined by the competent authority after consultation. Article 2(3) states that Member States may extend, after consultation, the protection provided in the Agreement to fishermen working on vessels of 24 metres and over to fishermen working on vessels of less than 24 metres in length.

Article 3 (Application of the Agreement)

Paragraph 1 establishes that a Member State may, on objective grounds, after consultation, exclude limited categories of fishermen or fishing vessels from the requirements of this

Agreement or from certain of its provisions, if the application of the agreement raises substantial problems in the light of the specific conditions of service of the fishermen or of the fishing vessel's operations. Paragraph 2 states that in case of exclusion of certain categories of fishermen or fishing vessels under paragraph 1, the competent authority must extend progressively the Agreement to all categories of fishermen or fishing vessels within five years from the entry into force of the Agreement. Paragraph 3 contains a non-regression clause.

Article 4 (More favourable conditions clause)

This Article contains a clause on more favourable provisions whereby any law, award or custom ensuring more favourable conditions to the fishermen than those in the Agreement, must not be affected by the provisions of the Agreement.

Article 5 (Responsibilities of fishing vessel owners, skippers and fishermen)

Article 5(1) states that it applies without prejudice to Directive 93/103/EC¹⁶. Paragraph 2 establishes the fishing vessel owner's responsibility to ensure that the skipper is provided with necessary resources and facilities to comply with the obligations of the Agreement. Article 5(3) describes, in a non-exhaustive manner, the skipper's different responsibilities, in order for him to ensure the safety and health of the fishermen on board of the vessel. Article 5(4) establishes that the skipper must not be constrained by the fishing vessel owner from taking decisions which are necessary for the safety of the fishermen, the vessel, and its safe navigation and operation. Article 5(5) establishes an obligation on the fishermen to comply with lawful orders of the skipper and with applicable safety and health measures.

Article 6 (Minimum age)

Article 6 applies without prejudice to Directive 94/33/EC¹⁷. According to paragraph 2 the minimum age for working on board a fishing vessel is 16 years on the condition that a young person is no longer subject to compulsory full-time schooling under national legislation. Fifteen-year-olds engaged in vocational training in fishing are allowed to work on board fishing vessels under the same conditions.

Article 6(3) establishes that the competent authorities may authorise persons of the age of 15 years old to perform light work during school holidays. The competent authorities must, after consultation, determine the kinds of work permitted and the conditions in which such work is undertaken and the periods of rest required. Article 6(4) states that the minimum age is 18 years for activities on board the vessels which due to their nature or the circumstances in which they are carried out are likely to jeopardise health, safety, physical, mental or social development, education or morals of young people. Article 6(5) states that these activities must be determined by national law or regulation or by the competent authorities after consultation. Article 6(6) establishes that young people from that age may perform these activities provided their health, safety, physical, mental or social development, education or morals are fully protected and they received specific instruction or vocational training and completed pre-safety training.

¹⁶ 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.

¹⁷ Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, OJ L 216, 20.8.1994, p. 12-20.

Article 6(7) establishes a definition of ‘night’. It contains a prohibition of night work under the age of 18. An exception may be made by the competent authorities when effective training of fishermen would be otherwise impaired or the specific nature or a recognised training programme requires fishermen under the age of 18 to perform duties at night. The competent authority must determine, after consultation, that the night work will not have a detrimental impact on their health or well-being. Article 6(8) contains a clause on more favourable provisions.

Article 7-9 (Medical examination / medical certificate)

Article 7

Article 7(1) establishes the fishermen’s obligation to have a valid medical certificate on board attesting to their fitness to perform their duties on board. Paragraph 2 states that exemptions to applying paragraph 1 may be granted, taking into account the safety and health of fishermen, size of the vessel, and availability of medical assistance, evacuation, duration of the voyage, area and type of fishing operation. Paragraph 3 states that these exemptions cannot be applied to fishermen working on a fishing vessel of 24 metres in length and over or which normally remain at sea for more than three days. The competent authority may grant an exemption to permit a fisherman to work for a limited and specified duration until a medical certificate can be obtained in urgent cases and only if the fisherman needs to be in possession of an expired medical certificate of recent date.

Article 8

Article 8 states that Member States must adopt laws, regulations or other measures providing for the nature and the frequency of the medical examination and the form, content and validity of the medical certificates. They must also adopt laws, regulations or other measures providing for the right for another binding examination by an independent medical examiner, appointed as a referee, in case of refusal of a certificate, or receiving a certificate while the person has declared that he or she is unfit for work or being refused a certificate while the medical reasons for refusal are no longer applicable.

Article 9

Article 9 establishes additional minimum requirements vis-à-vis the medical certificate for fishermen working on board of a vessel of 24 metres and over or a vessel which normally remains at sea for more than three days.

Article 10 (Manning)

Article 10 states that fishing vessel owners must ensure that fishing vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper. No numerical limit is indicated. Paragraph 2 establishes more detailed requirements for vessels of 24 metres and over. Paragraph 3 gives the competent authority the possibility to establish alternative requirements for vessels of 24 metres and over. They must facilitate the general objectives and aim of this Article and Article 11 and fulfil the requirements of paragraph 2 and not jeopardise the occupational safety and health of fishermen.

Article 11 (Hours of work and hours of rest)

Article 11 establishes working hours and hours of rest for sea fishermen falling under the scope of this Agreement, providing for an average weekly working time of 48 hours for a maximum reference period of 12 months. For the aforementioned fishermen Articles 3 to 6 inclusive, 8, and 21 of Directive 2003/88/EC¹⁸ will not apply. For other fishermen Directive 2003/88/EC will continue to apply.

Paragraph 2 states that to protect the fishermen's health and safety and to limit fatigue, maximum number of working hours and minimum hours of rest within a given period need to be established, taking into account the limits set by paragraph 3 and 4. They can be established by law, administrative agreement or collective agreement. Paragraph 3 lays down a maximum working time and minimum hours of rest during any 24-hour period and the maximum working time during any seven-day period. Paragraph 4 sets limits on the division of periods of rest.

Paragraph 5 allows for exceptions to the maximum reference period, maximum working hours and minimum hours of rest for objective or technical reasons or reasons concerning the organisation of work. Such exceptions will need to comply as far as possible with the standards laid down and allow for more compensatory rest periods. They may take account of more frequent or longer leave periods or the granting of compensatory leave for the fishermen. Paragraph 6 states that if exceptions are made to the limits on working hours and hours of rest, fishermen must receive compensatory rest periods as soon as practicable.

Paragraph 7 states that in emergency situations, the skipper may require the worker to work additional hours necessary for the safety of persons, the catch or the vessel itself or to provide assistance to persons or vessels in distress until the normal situation is restored. The skipper must ensure that all fishermen who have worked during a scheduled rest period have an adequate compensatory rest, after the normal situation is restored.

Paragraph 8 establishes that EU Member States may provide that fishermen working on board fishing vessels, that by law are not allowed to operate during a period longer than a month, must take annual leave during that period.

Article 12 (Crew list)

This Article states that each fishing vessel needs to carry a crew list. The crew list needs to be communicated before departure or immediately after departure to authorised persons ashore. The competent authority will determine to who and when the crew list needs to be provided and for what purpose(s).

Fisherman's work agreement (Article 13-18)

Article 13

Article 13 establishes that the provisions in Articles 14-18 apply without prejudice to Directive 91/553/EEC¹⁹.

Article 14

¹⁸ 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.

¹⁹ 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.

This Article states that each EU Member State must require in national law, regulations or other measures that fishermen who are employed on board a fishing vessel have a written work agreement that is comprehensible to them. The fisherman's work agreement must be in line with the provisions of the Agreement and in particular its Annex I which contains minimum standards on the content of the fisherman's work agreement.

Article 15

EU Member States must adopt national laws, regulations or other measures to establish procedures to ensure (a) that the fisherman can ask advice on the content of his or her fisherman's work agreement, before it is concluded; (b) maintenance of records under an agreement, where applicable; and (c) dispute settlement mechanisms regarding the fisherman's work agreement.

Article 16

This Article establishes that the fisherman must receive a copy of the fisherman's work agreement. A copy must be given to other parties on request in accordance with national law and practice. A copy of the fisherman's work agreement must be carried on board the vessel and be available to the fishermen.

Article 17

This Article states that Article 14-16 and Annex I to this Agreement do not apply to fishing vessel owners who are single-handedly operating the vessel.

Article 18

This Article establishes the fishing vessel owner's responsibility for ensuring that each fisherman employed on board of the vessel, has a written fisherman's work agreement. This work agreement needs to be signed by all parties concerned, i.e. fisherman, employer and/or representatives or other parties concerned.

Article 19 (Repatriation)

Article 19(1) states that EU Member States must ensure a right to repatriation for fishermen working on vessels flying their flag or registered under their plenary jurisdiction and that enter a foreign port. A right to repatriation exists when the fisherman's work agreement has expired or has been terminated for justified reasons by one or more of the parties to that agreement, or the fisherman is no longer able to carry out the duties required under the fisherman's work agreement or cannot be expected to carry them out in the specific circumstances (e.g. occupational accidents, diseases, or injuries). The right of repatriation also applies to fishermen transferred from the vessel to the foreign port for the reasons mentioned above.

Article 19(2) establishes that the fishing vessel owner bears the costs for repatriation unless the fisherman is in serious default of his or her obligations under the fisherman's work agreement, according to national law, regulations, or other measures. According to Article 19(3) EU Member States must prescribe the precise circumstances in which a fishermen is entitled to repatriation such as the maximum duration of service periods on board and the destinations to which fishermen may be repatriated.

Article 19(4) states that in case the fishing vessel owner fails to provide for repatriation, the Member State must arrange it. The Member State will be entitled to recover the costs from the fishing vessel owner. Paragraph 19(5) gives the fishing vessel owner the possibility to recover the costs under third party contractual arrangements.

Article 20 (Private market labour services)

Article 20(1) states that this Article applies without prejudice to Directive 2008/104/EC.²⁰ Article 20(2) clarifies that private market labour services for the purposes of this Article consist of recruitment and placement and of private employment services. Article 20(3) requires that Member States prohibit private employment agencies from using any means or mechanism or lists to prevent fishermen from engaging for work. No fees or other charges for private labour market services must be borne, directly or indirectly, fully or partly, by the fisherman. Article 20(4) stipulates that Member States which have ratified the ILO Work in Fishing Convention, 2007 are allowed to allocate certain responsibilities under that Convention to private employment agencies, as far as they have this right. The limits of the Convention have to be taken into account.

Articles 21-25 of the Agreement contain provisions on occupational safety and health, in particular with regard to food and accommodation.

Article 21(1) states that Articles 21-25 apply without prejudice to Directive 93/103/EC. National provisions implementing Articles 22-25 must be observed with due regard to hygiene, and overall safe, healthy and comfortable conditions.

According to Article 22, Member States must adopt laws, regulations or other measures with regard to, *inter alia*, the size and quality of the accommodation, food and potable water on vessels flying their flag or registered under their plenary jurisdiction. Article 23 states that each EU Member State must adopt laws, regulations and other measures which require that accommodation is of sufficient quality and size and equipped for the service of the vessel and the length of time the fishermen spend on board. In particular, the issues enumerated in Article 23 need to be taken into account, such as approval of plans for the construction or modification of fishing vessels in respect of accommodation, maintenance of accommodation and galley spaces, ventilation, heating, cooling and lighting, mitigation of excessive noise and vibration, location, size, construction materials, furnishing and equipping of different rooms and other accommodation spaces, sanitary facilities, and supply of sufficient hot and cold water, and complaint procedures concerning accommodation that does not meet the requirements of this Agreement.

Article 24 states that EU Member States must adopt laws, regulations or other measures with regard to food and water on board the vessel. In particular, food carried and served on board must be of sufficient quality, quantity and nutritional value. Potable water must be of sufficient quality and quantity. The fishing vessel owner must provide food and water at no cost to the fishermen. However, in accordance with national law and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisherman's work agreement so provides. The national laws, regulations and measures to be adopted by the EU Member State to transpose the provisions of Articles 22-24 must give full effect to Annex II of the Agreement on fishing vessel accommodation.

²⁰ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, p. 9-14.

Articles 26-31 concern health protection and medical care; protection in case of work-related sickness, injury or death.

Article 26 requires EU Member States to adopt national laws, regulations and other measures to ensure that fishermen on vessels flying their flag or registered under their plenary jurisdiction have the right to medical treatment ashore and to be taken ashore in case of a serious illness or injury in a timely manner. The fisherman must be provided by the fishing vessel owner with medical care and health protection while on board or while landed in a port outside the country responsible for the fisherman's social security protection. In case of a work-related illness or injury the fisherman must have access to adequate medical care in accordance with national law, practices and regulation. Under Article 27, the medical care and health protection on board referred to in Article 26(b) is subject to the applicable provisions of Directive 92/92/EEC²¹ and Article 28 of the Agreement. It must also include medical treatment and material assistance and support if the fisherman is landed in a foreign port outside the country responsible for the fisherman's social security protection.

In accordance with Article 28 of the Agreement, EU Member States must adopt national laws, regulations or other measures introducing additional requirements to the provisions of Directive 92/29/EEC, taking into account, *inter alia*, the area of operation and length of the voyage, and the number of fishermen on board. In addition it establishes that vessels need to be equipped with radio or satellite communications for medical consultation and a medical guide adopted or approved by the competent authority or the most updated edition of the *International Medical Guide for Ships*.

Article 29 establishes that EU Member States must adopt laws, regulations or other measures requiring that: a) the medical care under Article 26(b) and Article 28 is provided free of charge to fisherman; b) the fishing vessel owner is responsible for the cost of medical treatment of the fisherman until the latter has been repatriated, to the extent that the costs are not covered by the country responsible for the fisherman's social security protection.

Article 30 states that national law or regulations may allow this responsibility for defraying the cost of medical treatment to be excluded if the injury did not occur in the service of the vessel, or the illness was concealed during engagement, or the fishing vessel owner can prove that the injury or sickness illness was caused by wilful misconduct of the fisherman.

Article 31(1) obliges EU Member States to take measures to provide fishermen with protection for occupational illness, injury or death. Article 31(2) states that in case of illness or injury caused by an occupational accident the fisherman is entitled to compensation in accordance with national law and regulations. Under Article 31(3), the fishing vessel owner is responsible for this protection and compensation if it is not covered by the country responsible for the fisherman's social security protection. Under Article 32, the fishing vessel owner may ensure financial liabilities under Articles 29 and 31 of the Agreement through insurance or other schemes.

Articles 33-36 inclusive concern occupational safety and health and accident prevention.

²¹ 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.

Article 33 stipulates that Articles 34 to 36 apply without prejudice to Directive 89/391/EEC²², Directive 92/29/EEC²³, and Directive 93/103/EC²⁴.

Article 34 establishes that EU Member States are obliged to adopt laws, regulations or other measures concerning the prevention of occupational illnesses, injuries and accidents, including risk assessment and management and training of fishermen. Training of fishermen must also include training on the fishing equipment they will handle and the operations they will be engaged in. In addition they must include the responsibilities of fishing vessel owners, fishermen and others, taking into account in particular the occupational safety and health of fishermen under the age of 18. National laws, regulations and other measures must also concern the registration and investigation of accidents on board the vessel and the setting up of joint committees on occupational safety and health or (after consultation with the national social partners) other bodies.

Article 35 applies to all fishing vessels taking into account number of fishermen on board, area of operation and length of the voyage. It establishes the responsibilities of competent authorities and the fishing vessel owner with regard to the prevention of occupational illnesses, injuries and accidents on board and risk assessment and management of risks. In addition, it establishes their responsibilities vis-à-vis information and training of fishermen with regard to equipment, operations and basic safety, and the provision of personal protective clothing and equipment.

Article 36 establishes that fishermen or their representatives must participate in the risk evaluation.

Article 37 (Amendments)

This Article states that a review of the application of the Agreement and its annexes must be carried out, at the request of one of the signatories, subsequent to any amendment of any of the provisions of the ILO Work in Fishing Convention, 2007. If requested by one of the signatories, subsequent to any change in EU acquis affecting this Agreement, a review of the application of the Agreement must be carried out.

Article 38 (Final provisions)

This Article states that the Agreement will enter into force on the day the ILO Work in Fishing Convention, 2007 enters into force.

Annex I (Fisherman's Work Agreement) specifies the content of the Fisherman's Work Agreement.

Annex II (Fishing Vessel Accommodation)

The Annex specifies its scope and possible extensions (where deemed practicable and/or possible by the national competent authority). It covers a number of specific issues regarding

²² 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.

²³ 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.

²⁴ 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.

mainly accommodation on board, but also contains provisions on matters such as food and potable water, and on inspections by the skipper or under his authority. For the purposes of this Annex, the definitions of a) Agreement; b) new and c) existing vessel are laid down.

Proposal for a

COUNCIL DIRECTIVE

implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives 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

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 155(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Management and labour ('the social partners') may in accordance with Article 155(2) of the TFEU request jointly that agreements concluded by them at Union level be implemented by a Council decision on a proposal from the Commission.
- (2) On 14 June 2007, the International Labour Organisation adopted the Work in Fishing Convention, 2007²⁵, aiming to create a single, coherent instrument to complete the international living and working conditions standards for this sector, embodying revised and updated standards of existing international Conventions and Recommendations applicable to fishermen, as well as the fundamental principles found in other international labour Conventions.
- (3) The Commission consulted the social partners, in accordance with Article 154(2) of the TFEU, on whether to promote the application within the Union of the provisions of the Work in Fishing Convention, 2007²⁶.

²⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188
²⁶ COM(2007) 591 final.

- (4) On 8 May 2013, the General Confederation of Agricultural Cooperatives in the European Union, the European Transport Workers' Federation, and the Association of National Organisations of Fishing Enterprises in the European Union, wishing to undertake a first step towards a codification of EU social acquis in the sea fishing sector and to help create a level playing field for the sea fishing sector in the EU, concluded an agreement concerning the implementation of the Work in Fishing Convention, 2007 ('the Agreement'). On 10 May 2013, these organisations requested the Commission to implement their agreement by a Council decision in accordance with Article 155(2) of the TFEU.
- (5) For the purposes of Article 288 of the Treaty, the appropriate instrument to implement the Agreement is a directive.
- (6) The Commission has drafted its proposal for a directive, in accordance with its Communication of 20 May 1998²⁷ on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.
- (7) The provisions of this Directive should apply without prejudice to any existing Union provisions which are more specific or which grant a higher level of protection to all fishermen.
- (8) This Directive should not be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement.
- (9) This Directive and the Agreement annexed hereto lay down minimum standards; the Member States and the social partners may maintain or introduce more favourable provisions.
- (10) Without prejudice to the provisions of the Agreement on follow up and review by the social partners at EU level, the European Commission shall monitor the implementation of this Directive and the Agreement and carry out an evaluation.
- (11) The Directive will enter into force simultaneously with the Work in Fishing Convention, 2007 and the social partners wish the national measures implementing this Directive to enter into force not earlier than on the date of entry into force of the Work in Fishing Convention, 2007.
- (12) The Agreement applies to fishermen working in any capacity under a contract of employment or in an employment relationship on board of fishing vessels engaged in commercial fishing, flying the flag of an EU Member State or registered under the plenary jurisdiction of an EU Member State.
- (13) In order to protect the occupational safety and health of the fishermen working in any capacity under a contract of employment or in an employment relationship, the Agreement may further apply to all other fishermen present on board the same fishing vessel.
- (14) Any terms used in the Agreement and which are not specifically defined therein may be defined by Member States in accordance with national law and practice, as is the

²⁷ COM(1998) 322 final

case for other social policy directives using similar terms, providing that those definitions respect the content of the Agreement.

- (15) This Directive and the Agreement annexed hereto should take into account the provisions on the management of fishing capacity as highlighted in Regulation (EU) No 1380/2013²⁸.
- (16) The Member States may entrust social partners, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (17) The Commission has informed the European Parliament pursuant to Article 155(2) TFEU, by sending the text of its proposal for a Directive containing the Agreement.
- (18) This Directive respects the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, in particular Article 20, 31 and 32 thereof.
- (19) Since the objectives of this Directive which is intended to improve living and working conditions and to protect health and safety of workers in the sea fishing 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 be better achieved at Union level, the European Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the TEU. In accordance with the principle of proportionality, as set out in Article 5(4) of the TEU, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements, the Agreement between the General Confederation of Agricultural Cooperatives in the European Union, the European Transport Workers' Federation and the Association of National Organisations of Fishing Enterprises in the European Union, concluded on 8 May 2013, concerning the implementation of the Work in Fishing Convention, 2007, of the International Labour Organisation.

²⁸ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013

²⁹ OJ C 369, 17.12.2011, p. 14.

The text of the Agreement is set out in the annex to this Directive.

Article 2

1. Member States may maintain or introduce provisions more favourable to workers than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and social partners to adopt, in the light of changing circumstances, different laws and regulations or make different contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.
3. The application and interpretation of this Directive shall be without prejudice to any Union or national provision, custom or practice providing for more favourable conditions for the workers concerned.

Article 3

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties must be effective, proportionate and dissuasive.

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*two years after the entry into force of the Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

The Commission shall, after consulting the Member States and the social partners at Union level, present a report to the Council on the implementation, application and evaluation of this Directive no later than 5 years after the date provided in Article 6.

Article 6

This Directive shall enter into force on the date of entry into force of the ILO Work in Fishing Convention, 2007.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*