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Committee on Transport and Tourism

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control (COM(2012)0129 – C7-0081/2012 – 2012/0062(COD))

Committee on Transport and Tourism

Rapporteur: Brian Simpson

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control
(COM(2012)0129 – C7-0081/2012 – 2012/0062(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0129),
 - having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0081/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2012¹,
 - having consulted the Committee of the Regions,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The application and/or interpretation of this Directive should, under no circumstances, lead to a reduction in the

¹ OJ C ... /Not yet published in the Official Journal.

***level of protection enjoyed by workers
under Union legislation.***

Or. en

Justification

While minimum international standards are highly desirable, they should not be used to undermine the level of protection currently enjoyed by European seafarers. This is particularly important given the objective of encouraging more European citizens to take up maritime careers.

Amendment 2

Proposal for a directive

Article 1 – point 2

Directive 2009/16/EC

Article 3 – paragraph 5

Text proposed by the Commission

5. The application and/or interpretation of this Directive shall under no circumstances constitute grounds for justifying a reduction in the general level of protection of workers under Union social **legislation**.

Amendment

5. The application and/or interpretation of this Directive shall under no circumstances constitute grounds for justifying a reduction in the general level of protection of workers under Union social legislation ***nor be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in this Directive.***

Or. en

Justification

Reflecting Article 19 paragraph 8 of the Constitution of the International Labour Organisation, which is cited in the preamble to the Convention and also appears in recital 13 of Directive 2009/13/EC.

Amendment 3

Proposal for a directive

Article 1 – point 4 a (new)

Directive 2009/16/EC

Article 13 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(4a) In Article 13(1), the following point is added:

'(ca) verifies that the working and living conditions for seafarers on ships meet the requirements of the Maritime Labour Convention.'

Or. en

Justification

Reflecting Regulation 5.2.1, paragraph 4 of the Convention.

Amendment 4

Proposal for a directive

Article 1 – point 4 b (new)

Directive 2009/16/EC

Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(4b) In Article 13, the following paragraph is added:

'3a. Where clear grounds, as referred to in paragraph 3, include at least one of those set out in points 16, 17, 18 or 18a of Part A of Annex V, the more detailed inspection shall include checking compliance with the requirements relating to:

(a) minimum age;

(b) medical certification;

- (c) the seafarers' qualification;*
- (d) the seafarers' employment agreements;*
- (e) use of any licensed, certified or regulated private recruitment and placement service;*
- (f) hours of work or rest;*
- (g) manning levels for the ship;*
- (h) accommodation;*
- (i) the on-board recreational facilities;*
- (j) food and catering;*
- (k) health and safety and accident prevention;*
- (l) on-board medical care;*
- (m) on-board complaint procedures;*
- (n) payment of wages.'*

Or. en

Justification

Reflecting standard A5.2.1, paragraph 2 and Appendix A5-III of the Convention.

Amendment 5

Proposal for a directive
Article 1 – point 6 a (new)
Directive 2009/16/EC
Article 17 a (new)

Text proposed by the Commission

Amendment

(6a) The following Article is inserted:

'Article 17a

***Non-conformity with the requirements of
the Maritime Labour Convention***

1. Where the working and living conditions on the ship are found not to conform to the requirements of the Maritime Labour Convention, the inspector shall, forthwith, bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

In the event that the inspector considers such deficiencies to be significant or if they relate to a possible complaint under point 18a of Part A of Annex V, the inspector shall also bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organisations in the Member State in which the inspection is carried out, and may:

(a) notify a representative of the flag State;

(b) provide the competent authorities of the next port of call with the relevant information.

2. In respect of matters concerning the Maritime Labour Convention or any other ILO Convention, the Member State in which the inspection is carried out shall have the right to transmit a copy of the inspector's report, which shall be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the ILO with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.'

Or. en

Justification

A separate Article makes clear that action should be taken whenever cases of non conformity

with MLC requirements are identified, irrespective of whether these originate from a complaint.

Based on standard A5.2.1, paragraph 4 of the Convention.

Reflecting standard A5.2.1, paragraph 5 of the Convention.

Amendment 6

Proposal for a directive

Article 1 – point 6 b (new)

Directive 2009/16/EC

Article 18 – paragraph 4

Text proposed by the Commission

Amendment

(6b) Article 18 is replaced by the following:

'The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall take appropriate steps to safeguard the confidentiality of complaints made by seafarers including ensuring confidentiality during any interviews of crew members.'

Or. en

Justification

In line with paragraph 7 of standard A5.2.2 of the Convention, protection for the seafarer needs to go wider than simply maintaining confidentiality with regard to the master or shipowner.

Amendment 7

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – title

Text proposed by the Commission

Amendment

Complaints related to the Maritime Labour

Maritime Labour Convention ***complaints***

Justification

For clarity.

Amendment 8**Proposal for a directive****Article 1 – point 7**

Directive 2009/16/EC

Article 18a – paragraph -1 (new)

*Text proposed by the Commission**Amendment*

-1. A complaint by a seafarer alleging a breach of the requirements of the Maritime Labour Convention (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation.

Justification

Based on paragraph 1 of standard A5.2.2 of the Convention.

Amendment 9**Proposal for a directive****Article 1 – point 7**

Directive 2009/16/EC

Article 18a – paragraph -1 a (new)

*Text proposed by the Commission**Amendment*

-1a. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaints procedures provided

under Regulation 5.1.5 of the Maritime Labour Convention have been pursued. The inspector may also conduct a more detailed inspection in accordance with Article 13(2).

Or. en

Justification

Based on paragraph 2 of standard A5.2.2 of the Convention.

Amendment 10

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – paragraph -1 b (new)

Text proposed by the Commission

Amendment

-1b. The inspector shall, where appropriate, seek to promote a resolution of the complaint at ship-board level.

Or. en

Justification

Based on paragraph 3 of standard A5.2.2 of the Convention.

Amendment 11

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – paragraph -1 c (new)

Text proposed by the Commission

Amendment

-1c. In the event that the initial investigation or the more detailed inspection reveals a non-conformity that falls within the scope of Article 19, the provisions of that Article shall apply.

Justification

Based on paragraph 4 of standard A5.2.2 of the Convention.

Amendment 12

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – paragraph 1

Text proposed by the Commission

1. Where a complaint related to matters covered by the Maritime Labour Convention has not been resolved at the ship-board level, the port State control officer shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action. A report of the inspection shall be transmitted by electronic means to the inspection database referred to in Article 24.

Amendment

1. Where ***paragraph -1c does not apply and*** a complaint related to matters covered by the Maritime Labour Convention has not been resolved at the ship-board level, the port State control officer shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action ***to be submitted by the flag State***. A report of the inspection shall be transmitted by electronic means to the inspection database referred to in Article 24.

Justification

To align more closely with paragraph 5 of standard A5.2.2 of the Convention.

Amendment 13

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a complaint has not been resolved following action taken in

accordance with paragraph 1, the port State shall transmit a copy of the inspector's report to the Director-General of the ILO. The report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate shipowners' and seafarers' organisations in the port State shall be similarly informed.

Or. en

Justification

Reflecting standard A5.2.2, paragraph 6 of the Convention.

Amendment 14

Proposal for a directive

Article 1 – point 7

Directive 2009/16/EC

Article 18a – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the ILO.

Or. en

Justification

To ensure that a record is kept of such information and that it is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.

Amendment 15

Proposal for a directive

Article 1 – point - 8 (new)

Directive 2009/16/EC

Article 19 – paragraph 1

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Text proposed by the Commission

Amendment

(-8) In Article 19, paragraph 1 is replaced by the following:

'1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection or investigation are, or will be, rectified in accordance with the Conventions.'

Or. en

Justification

Reflecting standard A5.2.2 of the Convention. Paragraph 1 refers to 'initial investigation' while paragraph 4 refers to 'investigation' and 'inspection'. Both investigations and inspections need to be recognised within the Directive.

Amendment 16

Proposal for a directive

Article 1 – point - 8 a (new)

Directive 2009/16/EC

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

(-8a) In Article 19, paragraph 2 is replaced by the following:

'2. In the case of deficiencies which are clearly hazardous to safety, health, [...] the environment or the security of seafarers or where there is non-conformity which constitutes a serious or repeated breach of the requirements of the Maritime Labour Convention (including seafarers' rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped. The detention order or stoppage of an operation shall not be lifted until the hazard is removed or until such

authority establishes that the ship can, subject to any necessary conditions, including the acceptance of a plan of action to rectify such non-conformities which the authority is satisfied will be implemented in an expeditious manner, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.'

Or. en

Justification

Reflecting more closely the first part of standard A5.2.1, paragraph 6 of the Convention.

Amendment 17

Proposal for a directive

Article 1 – point - 8 b (new)

Directive 2009/16/EC

Article 19 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(-8b) In Article 19 the following paragraph is inserted:

'3a. If the ship is prevented from sailing, the inspector shall immediately notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline.'

Or. en

Justification

Reflecting the second part of standard A5.2.1, paragraph 6 of the Convention.

Amendment 18

Proposal for a directive

Article 1 – point 11

Directive 2009/16/EC

Article 30b – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Article 30a shall be conferred on the Commission for ***an indeterminate*** period ***of time*** from the date of entry into force of this Directive.

Amendment

2. The delegation of power referred to in Article 30a shall be conferred on the Commission for ***a*** period ***of five years*** from the date of entry into force of this Directive. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. Provided this report has been drawn up, the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such an extension not later than three months before the end of each period.***

Or. en

Justification

Reflecting Parliament's usual position that delegation should not be for an indefinite period and that the Commission should report on how it has used its powers before an extension is considered.

Amendment 19

Proposal for a directive

Article 1 – point 16

Directive 2009/16/EC

Annex V – point A – point 18

Text proposed by the Commission

18. The ship has changed flag for the purpose of avoiding compliance with the MLC.

Amendment

18. ***There are reasonable grounds to believe that*** the ship has changed flag for the purpose of avoiding compliance with the MLC.

Justification

To align with standard A5.2.1, paragraph 1 (c) of the Convention.

Amendment 20

Proposal for a directive

Article 1 – point 16

Directive 2009/16/EC

Annex V – point A – point 18 a (new)

Text proposed by the Commission

Amendment

18a. There is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the MLC.

Justification

To align with standard A5.2.1, paragraph 1 (d) of the Convention.

Amendment 21

Proposal for a directive

Article 1 – point 17

Directive 2009/16/EC

Annex X – point 3.10, point 9 a (new)

Text proposed by the Commission

Amendment

9a. The violation of fundamental rights and principles or seafarers' employment and social rights under Articles III and IV of the MLC being:

(1) the fundamental rights to:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour;

(d) the elimination of discrimination in respect of employment and occupation.

(2) employment and social rights as follows:

(e) every seafarer has the right to a safe and secure workplace that complies with safety standards;

(f) every seafarer has a right to fair terms of employment;

(g) every seafarer has a right to decent working and living conditions on board ship;

(h) every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

Or. en

Justification

To reflect Articles III and IV of the Convention in line with paragraph 2 of Guideline B5.2.1.

Amendment 22

Proposal for a directive

Article 2 – paragraph 1

Directive 2009/16/EC

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than **12 months** after the date of entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those provisions, they shall contain a reference to

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than **one month** after the date of entry into force of this Directive. 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 shall 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.

this Directive or shall 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.

Or. en

Justification

Many EU Member States will have ratified the Maritime Labour Convention within the first 30 signatories (or soon after) and in any case will have been working on the implementation of the Convention for several years and therefore will be able to comply fully with the Directive on the date the Convention enters into force. The transposition of the Directive into national law can run concurrently with the 12 month period for the Convention to enter into force following the 30th signatory. This approach would be consistent with the spirit of the social partner's agreement.

EXPLANATORY STATEMENT

THE MARITIME LABOUR CONVENTION

The Maritime Labour Convention (MLC) was adopted by the International Labour Organisation (ILO) on 23 February 2006. It covers the minimum requirements for seafarers to work on board a ship (title I of the MLC), conditions of employment (title II), accommodation, recreational facilities, food and catering (title III), health protection, medical care, welfare and social security protection (title IV) and compliance and enforcement (title V). It will replace 37 existing ILO maritime Conventions and related Recommendations adopted since 1920 and represent the first comprehensive maritime labour code for more than 1.2 million seafarers worldwide.

The ILO received the 30th ratification of the MLC on 20 August 2012, enabling it to go into effect a year later. Nine Member States (Bulgaria, Cyprus, Denmark, Latvia, Luxembourg, the Netherlands, Poland, Spain and Sweden) were among these first 30 ratifications as were Croatia, Norway and Switzerland.

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), has already aligned European legislation with the relevant provisions of Titles I, II, III and IV of the MLC. However, the European social partners did not have the power to include the enforcement provisions contained in Title V of the MLC in this Agreement so the current proposal is required. It is closely associated with the Proposal concerning the flag State responsibilities for the enforcement of Directive 2009/13/EC (COM(2012)134).

OVERALL ASSESSMENT

Parliament has long supported measures to establish minimum standards for working and living conditions on board ships. Given the global nature of the shipping industry, it is appropriate that such standards be applicable to the entire industry. The measures to ensure compliance, contained in title V, have a particularly important role to play in achieving these objectives. Substandard ships are unacceptable both in view of workers' rights and for the sake of ship safety, security and environmental protection.

Ship owners, masters and flag States are responsible for ensuring that ships comply with the relevant rules. However, not all flag States enforce such provisions effectively. This failure to fulfil their commitments allows some ships to sail in an unsafe condition, which threatens lives as well as the marine environment.

It is therefore appropriate for the EU to provide mechanisms to verify that the relevant standards are applied on board all ships calling at EU ports, regardless of the nationality of the seafarers or the ship's flag. This also provides a means to limit social dumping, which undermines working conditions and penalises shipowners who are offering decent working conditions in compliance with ILO rules.

The MLC's "no more favourable treatment" clause is particularly important in this context. Under this clause, ships that fly the flag of a State that has not ratified the Convention should not receive more favourable treatment than those ships flying the flag of a State that has ratified it. This clause will make a valuable contribution to ensuring a level-playing field for shipping.

At the same time, Parliament has also emphasised the importance of enhancing the attractiveness of the maritime professions to European citizens, including by improving working and living conditions on board ships. While minimum international standards are very welcome, care needs to be taken to ensure that they do not provide any excuse to reduce existing levels of protection under European social legislation.

PROPOSED AMENDMENTS

In addition to the amendments making clear that minimum international standards do not provide any reason to undermine existing European standards when those are higher, other proposed amendments seek to align the text of the Port State Control Directive more closely with that of the MLC. A further series of amendments seeks to ensure that information is transmitted to the International Labour Organisation so as to promote the spread of best practice. There are also proposals to strengthen clauses concerning the confidentiality of complaints so as to reduce the risk that seafarers may feel inhibited about lodging complaints for fear of subsequently suffering adverse consequences.

Given the importance of ensuring that EU law matches the Union's external commitments and that Member States have had since 2006 to prepare the necessary national legislation, it also seems appropriate to shorten the transposition period so that Member States will be in full compliance when the MLC enters into force.

Finally, as Directive 2009/16/EC is being amended for the first time since the entry into force of the Treaty of Lisbon, new rules on delegated and implementing powers are required. The proposed amendment on this point reflects Parliament's usual position that delegation should not be for an indefinite period and that the Commission should report on how it has used its powers before an extension is considered.

FURTHER ACTION REQUIRED

While early ratification of the MLC and transposition of the amended Directive are important, creating an adequate legislative framework is not sufficient. Member States must also recruit an adequate number of inspectors with the necessary skills, including the ability to assess seafarers' living and working conditions on board ships. The European Maritime Safety Agency has an important role to play in training inspectors to carry out MLC control functions.