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Summary report of the contributions received to the online consultation on the enforcement of the Maritime Labour Convention (MLC)

1. INTRODUCTION

The European Commission has organised an open consultation on the enforcement of the Maritime Labour Convention relevant provisions, which is one of its key initiatives in the social agenda for maritime transport.

This public consultation refers to the enforcement of Directive 2009/13/EC 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 the incorporation of certain provisions of the MLC title V into EU law.

The aim was to collect the views and background information to feed an impact assessment concerning the different options for EU action aimed to set up a mechanism for compliance checks and enforcement of Directive 2009/13/EC on all ships calling at ports of Member States, irrespective of their flag. The ultimate objective of the selected action is increasing maritime safety through improved working conditions, protection of health and safety of seafarers.

The MLC contains provisions on the states' responsibilities - including flag states, port states and labour supplying countries - which could help meet the objectives.

This consultation has allowed the Commission's services to hear what the main challenges, possibilities, or needs were and also to receive suggestions from the stakeholders.

This report seeks to assist stakeholders to get an overview and to present the responses reflecting the major positions of respondents. However, even if all contributions have been perused and considered, the report does not summarize all the comments received.

2. RESPONDENTS

23 contributions were received by the European Commission further to this public consultation: 7 by member states and public authorities, 10 by organisations, 6 by individuals.

2.1. By sector

Respondents were asked to indicate in which sector(s) they were engaged. It was possible to choose multiple sectors to take into account varying practices and responsibilities in the industry and also in public authorities.

The flag state and the port state authorities were the largest participating group (42% of respondents), jointly shipowner, ship management company, ship operator represented 25% of respondents while 5% for the seafarers.

Sectors	Replies
Ship crews; seafarers' trade union/worker's organisation;	02
Flag state;	11
Port state control	06
Labour supplying state	01
Educational / training / research organisation;	03
Maritime law / insurance Vessel inspection	02
Ship owner	06
Ship operator	03
Manning agency;	01
Ship management company	01
Others	04

2.2. Familiarity

Respondents were asked to comment on their level of familiarity with the Maritime Labour Convention. A vast majority considered the topic as being very and rather familiar to them; none of them answered that they were not familiar or had never heard of it.

3. CONSULTATION

The questionnaire was divided into 19 questions with subtopics as follows:

- Respondent information
- Views on the proposed measures
- Potential impacts of the measures
- Final considerations

There were references to the background document explaining the context and the objectives sought by the Commission and a short description of the envisaged measures and the rationale underlying them before some of the questions.

Some respondents elaborated the answers and added some technical comments. Some contributions contained suggestions and comments beyond the questionnaire.

The comments deviating from the consultation subject have not been taken up in the present note.

The opinions presented in this note do not reflect the Commission's official position.

4. PRESENTATIONS OF RESPONSES

4.1. Summary

Some respondents recalled that the most important step was that all EU member States ratify the MLC to have a level playing field and to fight substandard shipping. According to many respondents, this goal can only be achieved if there is a common interpretation and application of the relevant texts.

All respondents supported the principle of enforcing the MLC relevant provisions in the European Union by amending the Flag state Directive and the Port State Control Directive and also Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

Some of them insisted on sticking to the text of the MLC and to seek to eliminate distortions of competition. Some explicitly rejected the possibility of introducing stricter measures at EU level for fear of breaching the level playing field and penalising the European industries and risking EU ships flagging out of the EU, non-EU ships avoiding EU waters and also undermining the EU seafarer's rights on board non-EU ships outside EU waters. Some even took the example of the rapport between ISPS code and EU regulation 725/2004.

According to many contributions, enforcement of Directive 2009/13 by Port State Control authorities on non-EU registered ships was considered as the most important issue in order to ensure a global level playing field. Some respondents attached importance to finding the right balance between MLC conditions and the competitive position of the EU fleet versus global fleet.

The incorporation of the MLC provisions on the labour supplying state responsibilities into EU law was more controversial. Some respondents were strongly against the principle of establishing EU legislation on the labour supplying state responsibilities while other supported the principle and considered that the MLC should be treated as a whole.

Some respondents pinpointed that the MLC provisions introducing some flexibility for implementation and enforcement should be kept by the possible use of substantial equivalence.

Some contributions underlined the role of ILO and stated that any problems or experience relating to the enforcement of the MLC should be discussed in the ILO's tripartite committee of the ILO joint maritime commission, in order to harmonize, as much as possible, the implementation at global level. It was also recommended to consult the Paris Memorandum of Understanding.

4.2. General questions

After adopting Directive 2009/13¹ incorporating some parts of the Maritime Labour Convention, the enforcement of the concerned provisions had to be ensured by adequate means, notably relying on the flag state and the port state control responsibilities. Since the EU has competence on the definition of the flag state responsibilities and on the port state control, the rules have to be adjusted to comply with the MLC. It is essential to identify the possible difficulties of enforcement expected by the respondents.

Most important operational problem the initiative related to the enforcement of the MLC relevant provisions should address:

The respondents referred to the fundamental objectives:

- create a level playing field
- develop coordinated and harmonised procedures
- avoid regional rules stricter than the MLC
- ensure the effective application of MLC and safeguarding the global nature of the text
- bringing the EU regulations in line with the requirements of the MLC as laid down in its Title V on Enforcement and Implementation.

Some insisted on the objective of improving the labour and social perspectives of the seafarers.

What are the most important operational issues/difficulties the Flag state should address in the enforcement of the MLC?

Among the respondents, there was a general agreement according to which the most important difficulty for the flag state is to issue the Maritime Labour Certificate and the Declaration of Maritime Labour Certificate, including the interim Maritime Labour Certificate (36.8%).

The enforcement of the certification involving regular inspections to check the compliance with the MLC provisions is also seen as important (31.6%)

Some respondents added that it was vital that inspections and enforcement of the certification should keep focus on the main objectives of the Convention and should give leeway to the Flag States.

A minority of respondents also mentioned the onboard complaint procedure and the standard system of licensing for private recruitment and placement among the difficult issues to tackle.

Some respondents considered all issues equally important since the MLC had to be implemented as a whole.

¹ 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

Which are the most important operational issues/difficulties the Port State Control initiative should address in the enforcement of the MLC?

There was a general concern for the operational issues related to the onshore complaint procedure and the evaluation of deficiencies.

Some suggested that the initial inspection should be limited to check the validity of the MLC certificate, and only followed by more detailed inspections in case of clear grounds. They acknowledged the difficulty of evaluating the deficiencies and underlined the importance of consulting the flag state.

Several respondents expected difficulties with regard to the initial inspections constituting the way to identify deficiencies triggering more detailed inspections. Some of them feared that the more detailed inspections might be more burdensome both for the inspectors and for the ship.

The approval of a rectification action plan on social issues has been ranked among the most difficult topics.

Concerning the other issues, some respondents explicitly mentioned their support to the possible use of 'equivalence' in the legislation of the Flag State (issuing the certificates).

Which are the most important operational issues/difficulties the Labour Supplying State (LSS) initiative should address?

The question of the labour supplying state responsibilities elicited divergent views. For a majority of respondents, it was clear that these responsibilities consisted in:

- ensuring the social security protection of seafarers that are nationals or resident or domiciled in the territory of the LSS
- ensuring the implementation of the MLC requirements regarding recruitment and placement (in ratifying countries/non ratifying countries)

Some respondents supported the principle of transposing the MLC provisions related to LSS into EU law since the MLC had to be implemented as a whole with all obligations established in MLC title V equally important. Some attached importance to ensuring that all matters relating to the MLC and the supply of labour/seafarers should be in full compliance with the convention and transparent to vessel flag states, vessels owners and international seafarers organisations.

The opponents to EU legislation on LSS considered that the MLC was the result of long and difficult negotiations, taking into account the interest of all parties involved and that any EU initiative would risk endangering this delicate balance. According to their reasoning, enforcing EU legislation on LSS to third countries without going beyond the MLC would not be possible.

4.3. Comments on the options and other possible areas of intervention

The enforcement of the MLC relevant provisions in the EU can be envisaged under different options which have been submitted to the public consultation.

As described in the questionnaire, there are the following hypotheses:

- 1) A "do nothing" option, provisional or not.
- 2) A legal option consisting in:
 - amending the flag state directive (2009/21) to incorporate the corresponding MLC provisions on enforcement
 - amending the port state control directive (2009/16) to incorporate the corresponding MLC provisions on enforcement
 - amending the directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (2009/15) to allow the certification of ships foreseen in the MLC by recognised organisations
- 3) A legal option including the 3 above mentioned proposals and in addition, a proposal for a directive on the labour supplying state responsibilities

Against this background, all the respondents discarded the "do nothing" option and even said this option was not realistic due to the mandatory requirements established in the MLC.

A vast majority (84.2% of them) supported the legal option (2) comprising the amendments of Directives 2009/21; 2009/16; 2009/15 above mentioned.

The majority (84.2%) insisted on the importance of updating the legal texts (e.g. annexes of the Port state control Directive) as well as ensuring an enforcement procedure through flag state and port state control in compliance with MLC standards in place. The respondents made clear that additional and specific EU rules for compliance and enforcement were not necessary and would risk undermining the international nature of the MLC.

According to some respondents, the adjustment of the Directive on rules and standards for ship inspection was not considered as important as the adjustment of the PSC and FS directives (52.6%) and for 31.6% of them it was considered as not important.

Some of them, while supporting this legal option, added that the enforcement regime should not entail complicated and cumbersome procedures for the operator and its crews.

Only a minority of them supported also the most comprehensive legal option (3) with the principle of having a proposal for a directive on the labour supplying state responsibilities; the majority being explicitly reluctant to have such a proposal. Some considered that the responsibilities of the shipowner as defined in the MLC were clear enough. They also feared that a proposal on LSS would deter a 3rd country from ratifying the MLC.

Those in favour of a proposal on LSS said that all measures were important to achieve a level playing field in the industry but made clear that no additional provisions (other than those of the MLC) should be needed.

Two respondents insisted on establishing MLC standards for strengthening the port state control in the recruitment services area since it is regarded as the most powerful instrument to enforce the MLC provisions.

More measures

The vast majority of respondents was against more measures in addition to those presented in the consultation consisting in aligning EU law to the MLC title V.

However, 7 contributions contained suggestions for more measures.

Some answers referred to a Regulation which would aim to stabilise and encourage a sustainable maritime industry within Europe and to promote both the recruitment and the retention of a highly skilled EU workforce willing to take up careers in the European maritime cluster. To achieve the above-mentioned goal, the contribution referred to specific regulations applicable to the European maritime transport sector and governing manning conditions on board EU flagged vessels and in particular intra-EU trades (regular passenger and ferry services) - In addition, it is stated that there should be regulation on Manning levels aimed at ensuring the safe operation of any ship and tackle seafarers' fatigue.

One answer evoked the substantial equivalences when incorporating MLC provisions in EU law in order to take into account specific sub-industries, such as yachting industry by providing for instance for exemptions and/or equivalences in view of the specific nature of the yachting industry.

In updating Directive on Flag state to incorporate the MLC title V requirements corresponding to flag state competences, the Flag State Audit Scheme and Authorised Recognised Organisations audits should be inserted according to several respondents.

Some respondents suggested carrying out the control and certification processes at the shipowner's office onshore to prevent unnecessary work and problems for officers onboard ships.

Some suggested establishing mechanisms of cooperation of the EU Flag & State control bodies with non-EU states, shipowners, recruitment agencies and seafarers.

Some also provided the idea of promoting the ratification and enforcement of the MLC through the Commission bilateral contacts with third countries, in order to push for global implementation.

4.4. Potential impact of the measures

The European Commission asked the respondents to provide their views on the possible impacts associated with the enforcement of the MLC relevant provisions in particular through flag state responsibilities and port state control.

Impact evaluated

The economic, social and environmental impacts have been taken into account.

The respondents had to select from one to five: very positive, positive, no impact, negative and very negative to give an indication of the intensity of the impacts.

The answers suggest that clear positive impacts are expected in all domains.

No negative impact is predicted with regard to any of the areas. The protection of environment, prevention of accidents and pollution is regarded as the least affected by the enforcement measures; nevertheless positive impacts are expected by 72% of respondents.

Type and scale of impacts

Some respondents are confident that the enforcement of the MLC relevant provisions would ensure decent working and living conditions for seafarers working on foreign flagged ships entering EU ports and that the EU flagged ships would be protected from unfair competition from foreign flagged ships offering substandard working and living conditions.

Some respondents expected the cost and the regulatory impacts to be minimal on the EU shipping industry, given that EU Member States law and practice already substantially complies with the MLC, 2006.

- Impact on the environment:

Very positive and positive impacts on the safety and environmental protection of EU ports and waters are expected by 79% of the respondents. However, the relevant IMO conventions and codes (SOLAS, MARPOL, ISM, ISPS...) are considered more technically important regarding environmental issues and are supplemented by the MLC, 2006 for the human element.

- Economic impacts:

The impact on conditions of competition btw EU and non EU operators are rated positive and very positive for 86% of respondents.

As regards the impacts on the EU flags, they are expected to be positive and very positive in 84.2% of the answers and there are no negative answers. Concerning the non EU flags, there are 79% very positive and positive responses but 13% respondents consider the impacts would be negative, at least in the short term but positive in the long term. Some negative impact might occur particularly if the EU and its Member States would be ahead of non EU states as regards MLC implementations, in which case EU operators would have increased costs for upgrading their ships in compliance with the MLC.

The impact on the quality shipping is anticipated as very positive and positive at 91% with no negative answers.

- Social impacts:

Generally speaking, the social impacts are perceived as positive and very positive.

These social impacts encompass the impacts for all EU and non EU seafarers, working on board EU and non EU ships regarding the job quality (welfare, labour rights...), well being.

The positive impacts should benefit:

- EU seafarers working on board non EU flagged ships according to 95% of respondents.
- EU seafarers working on board EU flagged ships for 87% of respondents
- non EU seafarers working on board EU flagged ships for 89.5% of respondents
- non EU seafarers working on board non EU flagged ships for 87% of respondents

by improving the job quality.

However, 13% of respondents doubt the impacts would be positive for non EU seafarers regardless of the ship flag. Besides, some participants think that there would be no impact on job quality to EU seafarers and non-EU seafarers working on board EU flagged vessels, because the MLC, 2006 sets minimum standards which are lower than those already implemented on EU flagged vessels.

It is difficult to forecast the impact of the convention but for seafarers and quality shipowners the impact should be positive rather than negative.

Many improvements (and the consequent increase of costs and better level playing field) are expected both for the EU or non-EU seafarers. However, as EU maritime standards are higher in the EU member states (than in non-EU states) and are closer to the ILO requirements, more benefits are anticipated for the non-EU seafarers.

Other important impacts

A majority (65%) could not see any other important impacts to consider and 35% of respondents made suggestions. For some of them, there would be no significant changes on: Flag State Control processes of EU Member States Maritime Administrations, Port State Control processes of EU Member States Maritime Administrations because EU Member States Maritime Administrations have already established system of Flag State and Port State Control inspections.

A contribution shows hope for positive impacts resulting from better quality shipping brought by the MLC and the improvement of the image of the maritime industry, which also in long term would mean more attractiveness for recruiting and retaining young people to the maritime industry.

An other contribution referred to likely positive impacts linked to career and skill developments in the attractiveness of the seafaring profession, in the employment and retention of EU seafarers as well as in capturing positions ashore, thus safeguarding European know-how provided that these provisions are properly implemented.

In one contribution, the issue of labour supplying states was raised and the author assumed that in case LSS were not transparent in their compliance with the convention their seafarers would have difficulties in finding employment. According to this reasoning, the consequences might be that the shipowners may revert to national flag seafarers to avoid difficulties in complying with items on the Declaration of Maritime Labour Compliance Part II.

Final considerations

Data for assessing the impacts

Respondents were asked to suggest what kind of data could be used to assess the impacts on the proposed measures.

Some contributions enhanced the need for further data on seafarers employed and asked the Commission to develop an information system providing reliable and coherent data on maritime employment in the shipping industry and the shore based employment in Europe to remedy the lack of consistent and reliable data on the numbers of seafarers employed. They suggested the establishment of an official European database, including information on employment demand/supply, training, qualifications, recruitment practices and retention, amongst others based on national data collected by the Members States competent administrations. The statistical office of the European Union EUROSTAT, as well as the European Maritime Safety Agency (EMSA) could also be involved in such exercise.

The contributions underlined the need for a comparability of the data as well as compatibility of the different data systems to make sure that all aspects of the MLC are correctly assessed and in a similar way (comparability/compatibility of legal requirements as well as appropriate metrics).

Besides, some answers referred to the role of the Tripartite Committee of the ILO's Joint Maritime Commission to discuss the data issue.

The following indicators were suggested:

- Total number of certified ships in conformity with the MLC
- Data regarding the number and nationality of seafarers on EU flagged vessels.
- The inspection rate will be a concrete and important data element.
- Total number of detained ships with reference to the total number of inspected ships
- Total number of occupational accidents on board
- Data on well being on board
- MOU/PSC Data (Paris MOU, Tokyo MOU...)
- Accident Investigation Data: (EMSA, MAIB, NTSB)
- Pollution Data: (EMSA)
- On-board Complaints Data
- On-shore Complaints Data

Some contributions provided ideas like launching surveys on mariner perceptions of quality of life, analysing the legal issues resulting from claims of wage and working conditions in the framework of complaints and also commissioning studies on welfare facilities in ports with the help of associations and NGOs in ports.

Expected difficulties during the enforcement

Some respondents were concerned with achieving a global level playing field and mentioned the possible regional legislation distortions which could take the form of EU versus non-EU local legislation but also intra-EU legislative differences. They pleaded for minimising the differences at European level and to safeguard the competitiveness of the sectors. Moreover, they urged for common understanding and the recognition of the compliance documents (MLC, DMLC) by all port states.

Some problems have been identified by respondents in the recruitment of seafarers from non-EU and both non-MLC countries for ships under EU jurisdiction.

Some areas of possible concern have been identified, for instance:

- The definition of ship and of seafarer which could lead to misinterpretations and contradictions between the member states.
- The 'No more Favourable Treatment' of Port State Control could become an issue (particularly when legislations differ between Flag State and Port State).
- Employment contracts between seafarers and non shipowning third parties (e.g. employment agencies) should be possible.
- Recognition of Medical certificate by all Flag and Port States.
- Possible delays for the MLC Certification of the fleet, as there are delays in the legislation, lack of manpower in Recognised Organisations.

Several respondents expressed concern about the MLC enforcement by port state control and feared any additional bureaucratic resources from the industry. In the opinions expressed, the possible additional costs for EU Member States Maritime Administrations would result for the training of marine surveyors, for possible employment of administrative personnel and for issuing the MLCs and DMLCs. As far as the shipowners are concerned, the additional costs would result from the inspection and certification of ships.

There were several recommendations to limit the administrative burden and costs as much as possible.