

Public consultation on 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 implementation of certain provisions of that Convention within EU law

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BACKGROUND

An estimated 90% of world trade is carried on ships and seafarers are to that effect essential to international trade and the international economic and trade system. There are at least 1.2 million seafarers worldwide and around 200,000 seafarers in the European Union.

As generally acknowledged and explicitly stated by the International Labour Organisation (ILO), the shipping industry is “the world’s first genuinely global industry” which “requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry”.

The ILO formulated the need for an instrument to get relevant maritime labour standards fitted to the needs of the maritime sector stakeholders. The decision by the ILO to move forward to create the Maritime Labour Convention, a major new maritime labour convention, was the result of a joint resolution in 2001 by the international seafarers’ and ship owners’ organizations, also supported by governments.

The ILO's Maritime Labour Convention (MLC), adopted in 2006, provides comprehensive rights and protection at work for all the seafarers regardless of their nationality and the flag of the ship (<http://www.ilo.org/ilolex/cgi-lex/single.pl?query=012006186@ref&chspec=01>).

The MLC aims to both achieve decent working conditions for seafarers and secure fair competition for quality shipowners. The Convention sets out seafarers' rights to decent conditions of work on a wide range of subjects, and has been thought to be globally applicable, easily understandable, updatable and uniformly enforced. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (SOLAS, STCW, MARPOL).

Moreover, the MLC contains its own mechanisms to improve supervision at all levels: the ship, the company, the flag state, the port state, the labour supplying state and the ILO system for a global and uniform compliance and verification. Indeed, together with a sound corpus of rules, it was made clear that a more effective enforcement and compliance system was needed within the well-established IMO framework, in order to eliminate substandard ships for the sake of ship safety and security and environmental protection. To this end, a certification system mandatory for ships over 500 GT engaged in international voyages or voyages between foreign ports has been created. It is also applicable to ships under 500 GT if the shipowner so requests. The certification will be evidenced by two documents carried on board: the maritime labour certificate and the declaration of the maritime labour compliance produced by the flag state exerting jurisdiction over its ships.

The European Union has supported the whole process from the outset and has also encouraged the European Social Partners to conclude an agreement to transpose the relevant

parts of the MLC into EU law which resulted in the adoption of 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 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0030:01:EN:HTML>).

Directive 2009/13/EC has several similarities with Directive 1999/63 on the organisation of working time of seafarers (both are closely linked to ILO Conventions and constitute social partners' agreements incorporated into EU law by means of a Council decision).

Except as expressly provided otherwise, Directive 2009/13/EC applies to all ships whether publicly or privately owned, ordinarily engaging in commercial activities, other than ships engaging in fishing or in similar pursuits and ships of traditional build such as dhows and junks.

In order to protect safety and to ensure a level playing field, Member States should be allowed to verify compliance with the relevant provisions of Directive 2009/13/EC by all sea-going vessels calling at their ports, irrespective of the flag they fly.

A similar mechanism was applied by Directive 1999/95/EC with respect to the enforcement of Directive 1999/63.

The EU legislation related to flag state:

(<http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0132:01:EN:HTML>)

and port state control:

(<http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0057:01:EN:HTML>)

should be updated to be in line with those international requirements.

CHALLENGES

The expected effects of the MLC are: improved working and living conditions for seafarers; a more secure and responsible maritime workforce as well as a more socially responsible shipping industry; a positive impact on the protection of the environment due to less risk of accidents. Indeed, the ships from ratifying countries that provide decent conditions of work for their seafarers will benefit from the system of certification; avoiding or reducing the likelihood of lengthy delays related to inspections in foreign ports; fairer conditions of competition marginalizing substandard operations. This protection against unfair competition from substandard ships should be reinforced through the "No more favourable treatment" principle for ships from non-ratifying countries.

Furthermore, some actions could be taken at EU level beyond the enforcement of Directive 2009/13/EC.

As things stand, the lack of rules enforcing the ILO maritime labour standards (other than working time) is a challenge and might undermine the fair competition between shipowners, especially between EU and non EU ones.

The EU has to provide ways, through port state control and/or other arrangements to ensure that the relevant MLC maritime labour standards are applied on board all ships calling at EU ports regardless of the flags and the nationality of seafarers.

Moreover, and with the objective of preventing the shortage of qualified seafarers, the Commission considers that it is important to normalise the status of seafarer in the context of globalisation in order to limit social dumping, which deteriorates working conditions on board, and penalises shipowners offering decent working conditions complying with the ILO rules.

Support for the effective implementation of minimum standards contained in the MLC could represent an important contribution to the Commission's commitment to promote decent labour standards worldwide, as presented in its communication on the matter.¹

The enforcement, as foreseen in MLC title V, refers to the flag state, the port state and the labour supplying state responsibilities. The EU has, on the one hand, legislation on flag state obligations set out in Directive 2009/21² and on the other hand specific port state control procedures defined in Directive 2009/16³. Conversely, there is no EU acquis on labour supplying state responsibilities covering the principles laid down in the MLC title V.

Considering the strategic goals of the EU maritime transport policy objectives announced by the Commission Communication "Strategic goals and recommendations for the EU's maritime transport policy until 2018"⁴

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0008:EN:HTML>) and recognising the important role of the MLC, the European Commission has to consider different policy options, including the possibility of tabling proposals on flag state, port state control and labour supplying state, synchronised with the entry into force of the MLC and Directive 2009/13 expected to take place in 2013.

THE FLAG STATE RESPONSIBILITIES

The MLC establishes a strong enforcement regime, backed by a certification system where the flag State (or recognized organization on its behalf) will review the shipowners' plans and verify and certify that they are actually in place and being implemented. Ships will be required to carry a maritime labour certificate and a declaration of maritime labour compliance on board. This will be mandatory for ships above 500 gross tonnage that are engaged in international voyages or voyages between foreign ports. Flag States will be expected to ensure that national laws and regulations implementing Dir. 2009/13/EC are respected on smaller ships that are not covered by the certification system.

¹ COM(2006) 249 final of 24 May 2006 : « promoting decent work for all. The EU contribution to the implementation of the decent work agenda in the world ».

² Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (Text with EEA relevance)

³ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control

⁴ COM(2009) 8 final of 21.01.2009 : " Strategic goals and recommendations for the EU's maritime transport policy until 2018".

At EU level, Directive 2009/21 aims to ensure that Member States effectively and consistently discharge their obligations as flag States and to enhance safety and prevent pollution from ships flying the flag of a Member State. It foresees conditions for allowing a ship to operate under the flag of a Member State and the obligation for flag states to set up a quality management system and internal evaluation in line with the international standards.

In order to be in line with the international standards, it would be reasonable to amend Directive 2009/21 in order to update it with the ILO requirements (creation of new documents: maritime labour certificate (MLC) and declaration of maritime labour compliance (DMLC)) rather than multiplying texts related to the state obligations.

Thus, the Commission could present a proposal on flag state limited to taking up the MLC provisions related to the flag state's responsibilities.

THE PORT STATE RESPONSIBILITIES

The MLC contains provisions on the port state control foreseeing the verification of compliance of foreign ships with its requirements. Port states intervene as the second line of defence to enforce the MLC and to contribute to eliminating substandard shipping. The clause of "no more favourable treatment", according to which each State-party shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it, should encourage uniformity and harmonization in connection with inspection, by authorized officers, of foreign ships calling in the port of a Member.

The MLC defines a specific and simple procedure. An initial inspection is carried out to check the documents delivered by the flag state (the MLC and the DMLC) and to make a tour of the ship. Depending on the professional judgement of port state control inspectors, more detailed inspections can be performed, especially in cases where the deficiencies would constitute clear hazard to the safety, health or security of seafarers.

At EU level, Directive 2009/16 aims at helping to drastically reduce substandard shipping in the waters under the jurisdiction of EU Member States by:

- (a) increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;
- (b) establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, building upon the expertise and experience under the Paris MOU;
- (c) implementing within the Community a port State control system based on the inspections performed within the Community and the Paris MOU region, aiming to inspect all ships with a frequency depending on their risk profile, with ships posing a higher risk being subject to a more detailed inspection carried out at more frequent intervals.

Although Directive 2009/16 refers to MLC and to ILO standards, it needs to be updated to take into account the new documents and arrangements brought by the MLC and this could be done by an amending directive to avoid multiplying texts and risking creating confusion.

Thus, the Commission would present a proposal on port state control incorporating the items brought by the MLC in the current system.

THE LABOUR SUPPLYING STATE RESPONSIBILITIES

According to the MLC, the labour supplying state will have to ensure that each state-party fulfils its responsibilities as pertaining to seafarer recruitment and placement and the social protection of its seafarers. It entails that the state-party shall ensure that the private seafarer recruitment and placement services established in its territory should apply the MLC, especially the provisions related to the seafarer recruitment and placement system which shall be efficient, accountable and free of charge for the seafarer. The MLC also establishes that each state-party shall require that shipowners, who use seafarer recruitment and placement services based in countries where the MLC does not apply, should ensure that the services conform to the MLC requirements.

The possible implementation of these provisions in EU law needs further analysis and will not be dealt with in the framework of the present initiative.