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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.7.2008  
COM(2008) 422 final

Proposal for a

**COUNCIL DIRECTIVE**

**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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

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

The purpose of this proposal is to implement the Agreement on Maritime Labour Convention, 2006, concluded on 19 May 2008, between the organisations representing management and labour in the maritime transport sector (European Community Shipowners' Associations, hereinafter referred to as "ECSA" and European Transport Workers' Federation, hereinafter referred to as "ETF").

The Commission considers that if the provisions of the Maritime Labour Convention, 2006 are incorporated into Community law, they will enhance the attractiveness of work in the maritime sector for European seafarers, thus helping to create more and better jobs and, a more even playing field globally in the interest of all parties involved.

- **General context**

The maritime shipping sector is an industry operating worldwide . As such it is essential to define and enforce global minimum standards of employment and health and safety conditions for seafarers employed or working on board a seagoing ship.

The International Labour Organisation adopted on 23 February 2006 the Maritime Labour Convention, 2006, aiming to create a single, coherent instrument embodying all up-to-date standards applying to international maritime labour. Hence, this Convention incorporates the conventions and recommendations on maritime labour adopted by the ILO since 1919 into a single consolidated text to serve as a basis for the first universal Maritime Labour Code.

The Commission actively participated in works on the Maritime Labour Convention from the outset.

The Council adopted a Decision on 7 July 2007 authorising Member States to ratify the ILO Maritime Labour Convention, 2006 in the interests of the European Community, preferably before 31 December 2010<sup>1</sup>.

In matters of social policy, the Treaty confers a unique and key role upon the social partners at Community level. Article 138 provides that any initiative in this area must be subject to prior consultation of the social partners on the possible direction of the action and, subsequently, the content of the envisaged proposal. In this context, the Commission consulted management and labour on the advisability of developing the existing Community acquis by adapting, consolidating or complementing it in the light of the Maritime Labour Convention, 2006<sup>2</sup>.

The social partners decided to engage in negotiations in the light of Article 139(1) of the Treaty and, on 19 May 2008 (in connection with the first European Maritime Day)

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<sup>1</sup> OJ L 161, 22.6.2007  
<sup>2</sup> COM(2006) 287 final

they signed a joint agreement concerning the Maritime Labour Convention, 2006.

The social partners requested the Commission to propose a Council Directive giving effect to their agreement and its Annex A under EU law, in accordance with Article 139 of the Treaty. The present proposal responds to this request.

- **Existing provisions in the area of the proposal**

The proposal expressly amends Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)<sup>3</sup>. Furthermore it adds a complementary regulation regarding the maritime sector in the field covered by Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

The great majority of Community provisions in the field of health and safety of workers at work adopted under Article 137 EC apply in full to the area covered by the proposal and in particular the provisions of 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 and of its individual Directives, within the meaning of Article 16(1) of that Directive. The same goes for the provisions of Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels and of Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work as modified by Directives 91/382/EEC and 2003/18/EC.

In particular, the provisions of the proposal on medical care of seafarers and on health and safety protection and accident prevention, are covered by Directives 92/29/EEC and 89/391/EEC respectively.

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<sup>3</sup> OJ L 167, 2.7.1999

- **Consistency with the other policies and objectives of the Union**

The present proposal falls within the framework of the renewed Lisbon Strategy, aiming to enhance both growth and employment, in particular, by creating more and better jobs for a more dynamic and competitive Europe.

Within the scope of an integrated maritime policy for the EU<sup>4</sup> the Commission also lent its full support to "the social dialogue on the integration of the ILO Convention on maritime labour standards into Community law".

Furthermore the Commission stressed in COM(2007)591 final that it would "continue to work towards strengthening the international regulatory regime, in particular by promoting the ratification and enforcement of international standards and through international agreements with third countries including social clauses and equal treatment clauses"<sup>5</sup>.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Article 139(1) of the Treaty gives the social partners at Community level the possibility, should they so desire, to enter into a dialogue which may lead to contractual relations, including agreements. In this case, the Treaty does not impose any requirement for prior consultation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Not applicable.

## 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This proposal is intended to implement the Agreement on the Maritime Labour Convention, 2006 concluded on 19 May 2008, between ECSA and ETF, organisations

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<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An Integrated Maritime Policy for the European Union (COM/2007/0575 final)

<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Reassessing the regulatory social framework for more and better seafaring jobs in the EU (first phase consultation of the social partners at Community level provided for in Article 138(2) of the Treaty)

representing management and labour in the maritime transport sector.

The proposal also amends Council Directive 1999/63/EC of 21 June 1999, the scope of these amendments being strictly limited to matters regulated by Maritime Labour Convention, 2006.

- **Legal basis**

Article 139(2) of the Treaty provides that "agreements concluded at Community level shall be implemented..., in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission". The Agreement concluded by ECSA and ETF on the Maritime Labour Convention, 2006 refers to working conditions and contains provisions on the health and safety of workers, an area which is governed by Article 137(1) of the Treaty. This is one of the fields in which the Council can decide by a qualified majority. Article 139(2) hence constitutes the proper legal basis for the Commission's proposal.

In its Communication "Adapting and promoting the social dialogue at Community level"<sup>6</sup>, the Commission emphasised that "before any legislative proposal is presented to the Council, the Commission carries out an assessment involving consideration of the representative status of the contracting parties, their mandate and the legality of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized enterprises".

This assessment is carried out below.

1. Representativeness of the contracting parties and their mandate.

The legitimacy of social partners to be consulted and to be given the right to negotiate agreements likely to be implemented by Council decision or directive is based on their representativeness. According to the Commission's 2006 study on representativeness of the sea and coastal water transport social partners, ETF and ECSA fulfil the criteria set out in the Communication COM(1998)322 final, of 20 May 1998 and are consequently confirmed as the European social partners for this sector.

- a) ETF

The study states that there is at least one affiliation in each country under consideration. In many countries there are multiple memberships. On aggregate, ETF has 54 direct affiliations from the countries under examination. 70.7% of the unions examined are directly or indirectly (via higher-order units) affiliated to ETF.

In so far as data on sectoral membership of the national unions provide sufficient information on their relative strength, it can be concluded that ETF covers the sector's most important labour representatives. Exceptional cases of major unions non covered involve Cyprus and Sweden. Even in these cases, however, other important unions are

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<sup>6</sup> Communication from the Commission — Adapting and promoting the social dialogue at Community level, document COM(1998)322 final of 20 May 1998. See also the Communication concerning the application of the Protocol on Social Policy presented by the Commission to the Council and the European Parliament, document COM(93) 600 final of 14.12.1993.

covered. All but two sector-related members of ETF, for which pertinent information is available (i.e. Lithuania's LJS and Portugal's OFICIAISMAR-FSM) are involved in collective bargaining.

European organisations other than ETF represent only a small number of sector-related unions and countries.

This involves UNI Europa, with 6 affiliations covering 3 countries; the Nordic Transport Workers' Federation (NTF), with 5 affiliations covering 3 countries; the European Federation of Public Service Unions (EPSU), with 4 affiliations and 3 countries; the European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors and Allied Branches (EFFAT) and the European Mine, Chemical and Energy Workers' Federation (EMCEF), with each 3 affiliations and 3 countries; The European Metalworkers' Federation (EMF), with 3 affiliations and 2 countries; the Nordic Ship Officers' Congress (NFBK), with 2 affiliations and 2 countries; the European Federation of Building and Woodworkers (EFBWW) and the European Federation of Retired and Older People (FERPA), each with 2 affiliations and one country; and the European Trade Union Committee for Textiles:Clothing and Leather (ETUF:TCL), EURO-WEA, NordIng, EMPA and the Fédération des Cadres de l'Energie et de la Recherche, each with one affiliation.

This review underscores the status of ETF as the sector's labour representative, the more so since many of the above affiliations to other European organisations reflect the overlapping domains of the affiliates rather than a real attachment to the sea and coastal water transport sector.

#### b) ECSA

Of the 24 countries examined, ECSA has 21 under its umbrella through associational members from these countries. The Czech Republic, Latvia and Romania are not covered. This lack of affiliations in three Member States may raise doubts as to whether representativeness according to the above Commission criterion in terms of coverage of a sufficient number of Member States is met. Affiliated and unaffiliated associations co-exist in Cyprus, Denmark, Finland, Greece, Ireland, Italy and Sweden.

Lack of comparable membership data makes it difficult to bring out the relative importance of affiliated and unaffiliated associations in these countries. Taking into account also an association's role in collective bargaining as an indicator of its significance, it is clear that the most important associations of Cyprus, Denmark, Finland and Italy are affiliated. In Greece, Ireland and Sweden some important employer associations (i.e. EEA and the Union of Domestic Ferries, IBEC and SARF) that conduct bargaining are outside.

There are also some countries (i.e. Estonia, Ireland, Lithuania, Malta, Poland, Portugal, Sweden, Slovenia and the UK) where the affiliates of ECSA are not engaged in bargaining. With the exception of Ireland and Sweden, no other association that is involved in bargaining exists in these countries. This is because in this group of countries (with the exception of Sweden) sectoral multi-employer bargaining is absent, such that it is the companies themselves that engage in collective bargaining. In Ireland (on behalf of individual companies) and Sweden (in the form of multi-employer bargaining), collective bargaining is conducted by an unaffiliated employer association.

Compared to ETF, a greater number of member associations under ECSA umbrella are not involved in bargaining. Industrial relations are thus not the primary concern of these associations. Some ECSA members may have a role in industrial relations only through consultation procedures and participation in tripartite bodies. Actually, they may regard themselves as trade associations rather than as industrial relations actors. By contrast, ECSA members cover collective bargaining in 10 countries (i.e. Austria, Belgium, Cyprus, Germany, Denmark, Spain, Finland, France, Italy and the Netherlands).

A review of the memberships of the employer associations shows that there are no organisational links between sector-related employer associations and European federations other than ECSA. Affiliations are recorded only for federations at international level, such as the International Chamber of Shipping (ICS), the International Shipping Federation (ISF), the Baltic and International Maritime Council (BIMCO), INTERTANKO and INTERCARGO.

This underscores the relevance of ECSA as the representative European social partner for the employers in the sector.

### c) Mandate to negotiate

Both ETF and ECSA have a mandate to negotiate in matters of the European social dialogue. However, ETF does not have a permanent mandate in this respect. Rather, it is mandated provisionally to negotiate on behalf of its members on a case by case basis.

## 2. Legality of clauses of the agreement.

The Commission has scrutinised all the clauses of the agreement and has not found any to be contrary to Community law. The obligations imposed on the Member States do not arise directly from the agreement between the social partners but from the arrangements for implementing the agreement in application of the directive.

The content of the agreement remains within the remit of Article. 137 of the Treaty.

Insofar as parts of the agreement require amendments to EU legislation currently in force, these amendments are included in the proposal.

To the extent that parts of the agreement concern matters that are already covered by existing provisions of Community legislation, the agreement lays down in its final provisions that it shall not affect any law, custom or agreement which provides more favourable conditions for seafarers. In addition, the necessary safeguards of the *acquis*, in particular a more favourable treatment clause, were included in the proposal.

The Commission therefore considers that all the conditions are fulfilled for presenting a proposal for this agreement to be implemented by a Council decision.

## 3. Provisions regarding small and medium-sized enterprises.

Under the terms of Article 137(2) of the Treaty, legislation on social matters must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized enterprises



(SMEs). In this context the agreement does not make any distinction between workers of SMEs and others, and it does not introduce additional administrative, financial or legal constraints over and above current Community law. Therefore, the Commission concludes that the agreement complies with the provisions on small and medium-sized enterprises.

Art. 139(2) does not provide for consultation of the European Parliament on requests made to the Commission by the social partners. However, the Commission has forwarded its proposal so that Parliament can, if it so desires, communicate its opinion to the Commission and the Council. The same applies to the Economic and Social Committee and the Committee of the Regions.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The need for Community action is justified not only by the fact that the social partners, in accordance with Article 139(1), are convinced of the need for Community action in this matter, have successfully concluded an agreement at Community level and have asked for this agreement to be implemented by a Council decision on a proposal from the Commission pursuant to Article 139(2) of the Treaty, but also by the need to give the maritime sector a set of standards appropriate to its global operating environment.

The proposal for a directive also supplements the Member States' legislation by establishing a minimum standard with a view to improving the working conditions of seafarers. This framework provides clarity and transparency for the enterprises in the sector, is conducive to fair competition in the internal market, and will help eradicate such phenomena as social dumping.

Community action will better achieve the objectives of the proposal for the following reason(s).

The proposal introduces express amendments to existing EU legislation in order to update it according to the Maritime Labour Convention, 2006. This objective cannot be achieved by means of national legislation.

It will help bring about the simultaneous entry into force and uniform transposition in all Member States of the standards of Maritime Labour Convention, 2006 to which it refers .

Finally, the proposal will invest the agreement with specific enforcement measures under EU law.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The Council directive fulfils the requirement for proportionality in as much as it is

confined to setting the aims to be achieved.

As a consequence, the proposal leaves room for flexibility as regards the choice of concrete measures of implementation. Furthermore it is strictly limited to the transposition into EU law of updated standards contained in the Maritime Labour Convention, 2006.

- **Choice of instruments**

Proposed instruments: directive.

Other means would not be appropriate for the following reason(s).

The proposal amends EU legislation currently in force which requires a legislative act.

Furthermore, the term "decision" in Article 139(2) of the Treaty is used in its general meaning so that the legislative instrument can be selected in accordance with Article 249 of the Treaty. It is up to the Commission to propose to the Council which of the three binding instruments mentioned in the said article (regulation, directive or decision) would be the most appropriate. In this instance, given the type and content of the social partners' agreement, it is clear that it is best applied indirectly 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, in compliance with the undertakings which have been given, that the agreement should not be incorporated in but annexed to the proposal.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

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

- **Detailed explanation of the proposal**

The structure of the proposal is as follows:

Article 1

This article is confined to making the agreement between the social partners binding, which is the aim of a Council decision adopted under Article 139(2) of the Treaty.

#### Article 2

Amends Council Directive 1999/63/EC according to the Agreement of the Social Partners.

#### Article 3

Article 3 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 guarantee the levels of protection of workers already achieved and ensure that only the more favourable standards of occupational protection apply. In the same context, the aim of Article 3, paragraph 4, of the proposal, is to ensure that the general principle of responsibility of employer, as provided for in Article 5 of the framework Directive 89/391/EEC, is not affected by Standard A4.2§5 b) of the Agreement, which allows for limitations of the shipowner's responsibility in certain circumstances.

#### Article 4 to 7

Articles 4 to 7 contain the usual provisions on transposition into the Member States' national law, including the obligation to provide for effective, proportionate and dissuasive penalties. In particular, Article 6 makes reference to the date of entry into force of the Directive. The agreement of the social partners shall not enter into force before the Maritime Labour Convention, 2006 enters into force. In order to fulfil this wish of the social partners the date of entry into force of the Directive to which this proposal refers should be simultaneous with the entry into force of the Maritime Labour Convention, 2006. As this date is still to be determined a blank space is left in the proposal for this purpose with a brief explanation.

Proposal for a

## **COUNCIL DIRECTIVE**

**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**

**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and, in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Management and labour ("the social partners") may, in accordance with Article 139(2) of the Treaty, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission.
- (2) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006, desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions .
- (3) The Commission consulted management and labour, in accordance with Article 138(2) of the Treaty, on the advisability of developing the existing Community acquis by adapting, consolidating or supplementing it in view of the Maritime Labour Convention, 2006<sup>7</sup>.
- (4) The European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) informed the Commission of their wish to enter into negotiations in accordance with Article 138 (4) of the Treaty on 29 September 2006.
- (5) On 19 May 2008, the said organisations wishing to help create of a global level playing field throughout the maritime industry, concluded an Agreement on the Maritime Labour Convention, 2006; this Agreement and its Annex contain a joint

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<sup>7</sup> COM(2006) 287 final

request to the Commission to implement them by a Council decision on a proposal from the Commission, in accordance with Article 139(2) of the Treaty.

- (6) The agreement applies to seafarers on board ships registered in a Member State and/or flying flag of a Member State.
- (7) The agreement amends the European Agreement on the organisation of working time of seafarers concluded in Brussels on 30 September 1998 by the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).
- (8) Council Directive 1999/63/EC of 21 June 1999 containing the European Agreement on the organisation of working time of seafarers<sup>8</sup> in its Annex should therefore be amended accordingly.
- (9) For the purpose of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a directive.
- (10) The agreement will enter into force simultaneously with the Maritime Labour Convention, 2006 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 Maritime Labour Convention, 2006.
- (11) For any terms used in the Agreement and which are not specifically defined therein, this Directive leaves Member States free to define them in accordance with national law and practice, as is the case for other social policy Directives using similar terms, providing that those definitions respect the content of the Agreement.
- (12) Since the objectives of the action to be taken cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty; In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (13) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 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.
- (14) In accordance with paragraph 34 of the interinstitutional agreement on better law making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.
- (15) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as long as the Member States take all the

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<sup>8</sup> OJ L 167, 2.7.1999

necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;

- (16) The provisions of this Directive apply without prejudice to any existing Community provisions being more specific and/or granting a higher level of protection to seafarers, and in particular those included in Community legislation.
- (17) Compliance with the general principle of employer responsibility as provided for in Article 5 of the framework Directive 89/391/EEC<sup>9</sup>, and in particular in its paragraphs 1 and 3, should be ensured.
- (18) This Directive cannot be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement annexed to it.
- (19) This Directive and the agreement lay down minimum standards; the Member States and/or the social partners should be able to maintain or introduce more favourable provisions.
- (20) The Commission informed the European Parliament and the Economic and Social Committee, in accordance with its communication of 14 December 1993 concerning the application of the Agreement on social policy, by sending them the text of its proposal for a Directive containing the Agreement.
- (21) This instrument complies with the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union and in particular with Article 31 which provides that all workers have the right to healthy, safe and dignified working conditions, to a limit on their maximum working time and to weekly and daily rest periods and an annual period of paid holidays.
- (22) The implementation of the Agreement contributes to achieving the objectives under Article 136 of the Treaty.

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

This Directive implements the Agreement on Maritime Labour Convention concluded on 19 May 2008 between the organisations representing management and labour in the maritime transport sector (ECSA and ETF) as set out in the Annex .

#### *Article 2*

The Annex to Council Directive 1999/63/EC is amended , as follows:

1. In Clause 1, the following paragraph 3 is added:

*“3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by*

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<sup>9</sup> OJ L 183, 29.6.1989

*the competent authority in each Member State after consultation with the shipowners' and seafarers' organizations concerned with this question. In this context due account shall be taken of the Resolution of the 94<sup>th</sup> (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.”*

2. In Clause 2, points (c) and (d) are replaced by the following:

*“(c) the term 'seafarer' means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;”*

*“(d) the term 'shipowner' means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.”*

3. Clause 6 is replaced by the following:

*“1. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Clause, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.*

*2. An exception to strict compliance with the night work restriction may be made by the competent authority when:*

- (a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or*
- (b) the specific nature of the duty or a recognized training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, that the work will not be detrimental to their health or well-being.*

*3. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardize their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organizations concerned, in accordance with relevant international standards.”*

4. Clause 13 is replaced by the following:

*“1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.*

*2. Exceptions can only be permitted as prescribed in this Agreement.*

3. *The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.*

4. *In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organizations concerned, and giving due consideration to applicable international guidelines, prescribe the nature of the medical examination and certificate.*

5. *This Agreement is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended ("STCW"). A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of paragraphs 1 and 2 of this Clause. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.*

6. *The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.*

7. *Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.*

8. *Each medical certificate shall state in particular that:*

- (a) *the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and*
- (b) *the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.*

9. *Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:*

- (a) *a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;*
- (b) *a certification of colour vision shall be valid for a maximum period of six years.*

10. *In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:*



- (a) *the period of such permission does not exceed three months; and*
- (b) *the seafarer concerned is in possession of an expired medical certificate of recent date.*

*11. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.*

*12. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.*

*13. The nature of the health assessment to be made and the particulars to be included in the medical certificate shall be established after consultation with the shipowners and seafarers organisations concerned.*

*14. All seafarers shall have regular health assessments. Watchkeepers suffering from health problems certified by a medical practitioner as being due to the fact that they perform night work shall be transferred, wherever possible, to day work to which they are suited.*

*15. The health assessment referred to in paragraphs 13 and 14 shall be free and comply with medical confidentiality. Such health assessments may be conducted within the national health system.”*

5. Clause 16 is replaced by the following:

*“Every seafarer shall be entitled to paid annual leave. The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment and pro rata for incomplete months.*

*The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.”*

### *Article 3*

1. Member States may maintain or introduce more favourable provisions 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/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or 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/or interpretation of this Directive shall be without prejudice to any Community or national provision, custom or practice providing for more favourable conditions for the seafarers concerned.

4. The provision of Standard A4.2 paragraph 5 b) shall not affect the principle of responsibility of the employer as provided for in Article 5 of Directive 89/391/EEC.

#### *Article 4*

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. Member States shall notify these provisions to the Commission by the date set out in Article 5(1) and any subsequent amendments thereto in good time.

#### *Article 5*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that, management and labour have introduced the necessary measures by agreement, not later than twelve months after the date of entry into force of this Directive.

2. When Member States adopt 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. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

3. 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 6*

This Directive shall enter into force on [\*] ["\*" stands for the date of entry into force of the Maritime Labour Convention, 2006].

#### *Article 7*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

**ANNEX: Agreement concluded by ECSA and ETF on the Maritime Labour Convention, 2006**

PREAMBLE

The signatory parties

Whereas the ILO Maritime Labour Convention, 2006 (hereinafter referred to as “the Convention”) requires each Member to satisfy itself that the provisions of its laws and regulations respect, in the context of the Convention, the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation;

Whereas the Convention provides that every seafarer has the rights to a safe and secure workplace that complies with safety standards, to fair terms of employment, to decent working and living conditions and to health protection, medical care, welfare measures and other forms of social protection;

Whereas the Convention requires Members to ensure, within the limits of its jurisdiction, that the seafarers’ employment and social rights set out in the preceding paragraph of this Preamble are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice;

Whereas the Signatory Parties wish to draw particular attention to the “Explanatory Note to the Regulations and Code of the Maritime Labour Convention”, which sets out the format and structure of the Convention;

Having regard to the Treaty establishing the European Community (hereinafter referred to as “the Treaty”) and in particular Articles 137, 138 and 139 thereof;

Whereas Article 139 (2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council Decision on a proposal from the Commission;

Whereas the signatory parties hereby make such a request;

Whereas the proper instrument for implementing the Agreement is a Directive, within the meaning of Article 249 of the Treaty, which binds Member States as to the result to be achieved, whilst leaving to national authorities the choice of form and methods; Article VI of the Convention permits Members of the ILO to implement measures that are to their satisfaction substantially equivalent to the Standards of the Convention which is aimed both at full achievement of the general objective and purpose of the Convention and at giving effect to the said provisions of the Convention; the implementation of the Agreement by a Directive and the principle of “Substantial Equivalence” in the Convention are thus aimed at giving Member States the ability to implement the rights and principles in a manner provided by Article VI paragraphs 3 and 4 of the Convention.

Have agreed the following:

## DEFINITIONS AND SCOPE OF APPLICATION

1. For the purpose of this Agreement and unless provided otherwise in particular provisions, the term:

- (a) *competent authority* means the minister, government department or other authority designated by a Member State having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- (b) *gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);
- (c) *seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;
- (d) *seafarers' employment* agreement includes both a contract of employment and articles of agreement;
- (e) *ship* means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- (f) *shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

2. Except as expressly provided otherwise, this Agreement applies to all seafarers.

3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organizations concerned with this question. In this context due account shall be taken of the Resolution of the 94<sup>th</sup> (Maritime) Session of the General Conference of the International Labour Organization concerning information on occupational groups.

4. Except as expressly provided otherwise, this Agreement applies to all ships whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Agreement does not apply to warships or naval auxiliaries.

5. In the event of doubt as to whether this Agreement applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organizations concerned.

## THE REGULATIONS AND THE STANDARDS

### TITLE 1. MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP

#### *Regulation 1.1 – Minimum age*

1. No person below the minimum age shall be employed or engaged or work on a ship.
2. A higher minimum age shall be required in the circumstances set out in this Agreement.

#### *Standard A1.1 – Minimum age*

The minimum age is regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organization of working time for seafarers (to be amended in accordance with Annex A to this Agreement)

#### *Regulation 1.2 – Medical certificate*

Medical certificates are regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organization of working time for seafarers (to be amended in accordance with Annex A to this Agreement)

#### *Regulation 1.3 – Training and qualifications*

1. Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.
2. Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.
3. Training and certification in accordance with the mandatory instruments adopted by the International Maritime Organization shall be considered as meeting the requirements of paragraphs 1 and 2 of this Regulation.

### TITLE 2. CONDITIONS OF EMPLOYMENT

#### *Regulation 2.1 – Seafarers' employment agreements*

1. The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in this Agreement.
2. Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing.
3. To the extent compatible with the Member State's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements.

### *Standard A2.1 – Seafarers’ employment agreements*

1. Each Member State shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

- (a) seafarers working on ships that fly its flag shall have a seafarers’ employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Agreement;
- (b) seafarers signing a seafarers’ employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;
- (c) the shipowner and seafarer concerned shall each have a signed original of the seafarers’ employment agreement;
- (d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship’s master, and that such information, including a copy of the seafarers’ employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and
- (e) seafarers shall be given a document containing a record of their employment on board the ship.

2. Where a collective bargaining agreement forms all or part of a seafarers’ employment agreement, a copy of that agreement shall be available on board. Where the language of the seafarers’ employment agreement and any applicable collective bargaining agreement is not in English, the following shall also be available in English (except for ships engaged only in domestic voyages):

- (a) a copy of a standard form of the agreement; and
- (b) the portions of the collective bargaining agreement that are subject to a port State inspection.

3. The document referred to in paragraph 1(e) of this Standard shall not contain any statement as to the quality of the seafarers’ work or as to their wages. The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered, shall be determined by national law.

4. Each Member State shall adopt laws and regulations specifying the matters that are to be included in all seafarers’ employment agreements governed by its national law. Seafarers’ employment agreements shall in all cases contain the following particulars:

- (a) the seafarer’s full name, date of birth or age, and birthplace;
- (b) the shipowner’s name and address;

- (c) the place where and date when the seafarers' employment agreement is entered into;
- (d) the capacity in which the seafarer is to be employed;
- (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
- (f) the amount of paid annual leave or, where applicable, the formula used for calculating it;
- (g) the termination of the agreement and the conditions thereof, including:
  - (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
  - (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and
  - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;
- (h) the health and social security protection benefits to be provided to the seafarer by the shipowner;
- (i) the seafarer's entitlement to repatriation;
- (j) reference to the collective bargaining agreement, if applicable; and
- (k) any other particulars which national law may require.

5. Each Member State shall adopt laws or regulations establishing minimum notice periods to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organizations concerned, but shall not be shorter than seven days.

6. A notice period shorter than the minimum may be given in circumstances which are recognized under national law or regulations or applicable collective bargaining agreements as justifying termination of the employment agreement at shorter notice or without notice. In determining those circumstances, each Member State shall ensure that the need of the seafarer to terminate, without penalty, the employment agreement on shorter notice or without notice for compassionate or other urgent reasons is taken into account.

#### *Regulation 2.3 – Hours of work and hours of rest*

Seafarers' hours of work and rest are regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

### *Regulation 2.4 – Entitlement to leave*

1. Each Member State shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions in accordance with this Agreement and Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).
2. Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

### *Regulation 2.5 – Repatriation*

1. Seafarers have a right to be repatriated at no cost to themselves.
2. Each Member State shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated.

### *Standard A2.5 – Repatriation*

1. Each Member State shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;
  - (b) when the seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons; and also
  - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member State shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
  - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
  - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation - such periods to be less than 12 months; and
  - (c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.
3. Each Member State shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or



other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.

5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:

- (a) the competent authority of the Member State whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member State whose flag the ship flies;
- (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member State whose flag the ship flies;
- (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.

6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member State which has paid the cost of repatriation may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.

7. Each Member State shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

8. In particular, a Member State shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.

9. Each Member State shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

*Regulation 2.6 – Seafarer compensation for the ship's loss or foundering*

Seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.

*Standard A2.6 – Seafarer compensation for the ship's loss or foundering*

1. Each Member State shall make rules ensuring that, in every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.

2. The rules referred to in paragraph 1 of this Standard shall be without prejudice to any other rights a seafarer may have under the national law of the Member State concerned for losses or injuries arising from a ship's loss or foundering.

### *Regulation 2.7 – Manning levels*

Provisions as to the sufficient, safe and efficient manning of ships are contained in Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

### *Regulation 2.8 – Career and skill development and opportunities for seafarers' employment*

Each Member State shall have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in its territory.

### *Standard A2.8 – Career and skill development and employment opportunities for seafarers*

1. Each Member State shall have national policies that encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce.
2. The aim of the policies referred to in paragraph 1 of this Standard shall be to help seafarers strengthen their competencies, qualifications and employment opportunities.
3. Each Member State shall, after consulting the shipowners' and seafarers' organizations concerned, establish clear objectives for the vocational guidance, education and training of seafarers whose duties on board ship primarily relate to the safe operation and navigation of the ship, including ongoing training.

## TITLE 3. ACCOMMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING

### *Standard A3.1 – Accommodation and recreational facilities*

1. Ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices as required by the competent authority.
2. Appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers, taking into account provisions on health and safety protection and accident prevention.
3. The competent authority shall require frequent inspections to be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection shall be recorded and be available for review.
4. In the case of ships where there is need to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, the competent authority may, after consultation with the shipowners' and seafarers' organizations concerned, permit fairly applied variations in respect of this Standard on condition that such variations do not result in overall facilities less favourable than those which would result from the application of this Standard.

### *Regulation 3.2 – Food and catering*

1. Each Member State shall ensure that ships that fly its flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds.
2. Seafarers on board a ship shall be provided with food free of charge during the period of engagement.
3. Seafarers employed as ships' cooks with responsibility for food preparation must be trained and qualified for their position on board ship.

### *Standard A3.2 – Food and catering*

1. Each Member State shall adopt laws and regulations or other measures to provide minimum standards for the quantity and quality of food and drinking water and for the catering standards that apply to meals provided to seafarers on ships that fly its flag, and shall undertake educational activities to promote awareness and implementation of the standards referred to in this paragraph.
2. Each Member State shall ensure that ships that fly its flag meet the following minimum standards:
  - (a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, shall be suitable in respect of quantity, nutritional value, quality and variety;
  - (b) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and
  - (c) catering staff shall be properly trained or instructed for their positions.
3. Shipowners shall ensure that seafarers who are engaged as ships' cooks are trained, qualified and found competent for the position in accordance with requirements set out in the laws and regulations of the Member State concerned.
4. The requirements under paragraph 3 of this Standard shall include a completion of a training course approved or recognized by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.
5. On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook, anyone processing food in the galley shall be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.
6. In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited

period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

7. The competent authority shall require that frequent documented inspections be carried out on board ships, by or under the authority of the master, with respect to:

- (a) supplies of food and drinking water;
- (b) all spaces and equipment used for the storage and handling of food and drinking water; and
- (c) galley and other equipment for the preparation and service of meals.

8. No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.

#### TITLE 4. HEALTH PROTECTION, MEDICAL CARE AND WELFARE

##### *Regulation 4.1 – Medical care on board ship and ashore*

1. Each Member State shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.

2. Each Member State shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member State's medical facilities on shore.

3. The requirements for on-board health protection and medical care include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.

##### *Standard A4.1 – Medical care on board ship and ashore*

1. Each Member State shall ensure that measures providing for health protection and medical care, including essential dental care, for seafarers working on board a ship that flies its flag are adopted which:

- (a) ensure the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board ship;
- (b) ensure that seafarers are given health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;
- (c) give seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;
- (d) are not limited to treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes.

2. The competent authority shall adopt a standard medical report form for use by the ships' masters and relevant onshore and on-board medical personnel. The form, when completed, and its contents shall be kept confidential and shall only be used to facilitate the treatment of seafarers.

3. Each Member State shall adopt laws and regulations establishing requirements for on-board hospital and medical care facilities and equipment and training on ships that fly its flag.

4. National laws and regulations shall as a minimum provide for the following requirements:

- (a) all ships shall carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority; the national requirements shall take into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards;
- (b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than 72 hours duration shall carry a qualified medical doctor who is responsible for providing medical care; national laws or regulations shall also specify which other ships shall be required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board;
- (c) ships which do not carry a medical doctor shall be required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended ("STCW"); seafarers designated to provide medical first aid shall have satisfactorily completed training in medical first aid that meets the requirements of STCW; national laws or regulations shall specify the level of approved training required taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board; and
- (d) the competent authority shall ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available 24 hours a day; medical advice, including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice, shall be available free of charge to all ships irrespective of the flag that they fly.

#### *Regulation 4.2 – Shipowners' liability*

1. Each Member State shall ensure that measures are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.

2. This Regulation does not affect any other legal remedies that a seafarer may seek.

### *Standard A4.2 – Shipowners’ liability*

1. Each Member State shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:

- (a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
- (b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers’ employment agreement or collective agreement;
- (c) shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and
- (d) shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

2. National laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

3. Where the sickness or injury results in incapacity for work the shipowner shall be liable:

- (a) to pay full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with this Agreement; and
- (b) to pay wages in whole or in part as prescribed by national laws or regulations or as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member State concerned.

4. National laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

5. National laws or regulations may exclude the shipowner from liability in respect of:

- (a) injury incurred otherwise than in the service of the ship;
- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.

6. National laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities.

7. Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

*Regulation 4.3 – Health and safety protection and accident prevention*

1. Each Member State shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.

2. Each Member State shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations.

3. Each Member State shall adopt laws and regulations and other measures addressing the matters specified in this Agreement taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

*Standard A4.3 – Health and safety protection and accident prevention*

1. The laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, shall include the following subjects:

- (a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member State's flag, including risk evaluation as well as training and instruction of seafarers;
- (b) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and
- (c) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.

2. The provisions referred to in paragraph 1 of this Standard shall:

- (a) take account of relevant international instruments dealing with occupational safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment;

- (b) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme; and
- (c) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee; such a committee shall be established on board a ship on which there are five or more seafarers.

3. The laws and regulations and other measures referred to in Regulation 4.3, paragraph 3, shall be regularly reviewed in consultation with the representatives of the shipowners' and seafarers' organizations and, if necessary, revised to take account of changes in technology and research in order to facilitate continuous improvement in occupational safety and health policies and programmes and to provide a safe occupational environment for seafarers on ships that fly the Member State's flag.

4. Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the requirements of this Agreement.

5. The competent authority shall ensure that:

- (a) occupational accidents, injuries and diseases are adequately reported;
- (b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and
- (c) occupational accidents are investigated.

6. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data.

7. The competent authority shall cooperate with shipowners' and seafarers' organizations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions.

8. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

#### *Regulation 4.4 – Access to shore-based welfare facilities*

Each Member State shall ensure that shore-based welfare facilities, where they exist, are easily accessible. The Member State shall also promote the development of welfare facilities in designated ports to provide seafarers on ships that are in its ports with access to adequate welfare facilities and services.



*Standard A4.4 – Access to shore-based welfare facilities*

1. Each Member State shall require, where welfare facilities exist on its territory, that they are available for the use of all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work.
2. Each Member State shall promote the development of welfare facilities in appropriate ports of the country and determine, after consultation with the shipowners' and seafarers' organizations concerned, which ports are to be regarded as appropriate.
3. Each Member State shall encourage the establishment of welfare boards which shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

TITLE 5. COMPLIANCE AND ENFORCEMENT

*Regulation 5.1.5 – On-board complaint procedures*

1. Each Member State shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the Convention (including seafarers' rights).
2. Each Member State shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.
3. The provisions in this Regulation are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

*Standard A5.1.5 – On-board complaint procedures*

1. Without prejudice to any wider scope that may be given in national laws or regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of the Convention (including seafarers' rights).
2. Each Member State shall ensure that, in its laws or regulations, appropriate on board complaint procedures are in place to meet the requirements of Regulation 5.1.5. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.
3. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term "victimization" covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.
4. In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority in the flag State and, where different,

in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

## FINAL PROVISIONS

Subsequent to any amendments to any of the provisions of the Maritime Labour Convention, 2006, and if requested by either one of the Parties to this Agreement, a review of the application of this Agreement shall be carried out.

The Social Partners make this Agreement on condition that it shall not enter into force until the date when the ILO Maritime Labour Convention, 2006 enters into force, such date being 12 months after the date on which there have been registered with the International Labour Office ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent.

Member States and/or the Social Partners can maintain or introduce more favourable provisions for seafarers than set out in this Agreement.

This Agreement shall be without prejudice to any more stringent and/or specific existing Community legislation.

This Agreement shall not affect any law, custom or agreement which provides for more favourable conditions for the seafarers concerned. For example, the terms of this Agreement are without prejudice to Council Directive 1989/391 on the introduction of measures to encourage improvements in the safety and health of workers at work, to Council Directive 92/29 on the minimum safety and health requirements for improved medical treatment on board vessels and to Council Directive 1999/63 concerning the Agreement on the organization of working time of seafarers (to be amended in accordance with Annex A to this Agreement).

Implementation of this Agreement shall not constitute valid grounds for reducing the general level of protection afforded to seafarers in the field of the Agreement.

EUROPEAN TRANSPORT WORKERS' FEDERATION (ETF)

EUROPEAN COMMUNITY SHIPOWNERS' ASSOCIATIONS (ECSA)

CHAIRPERSON MARITIME TRANSPORT SECTORAL DIALOGUE COMMITTEE

BRUSSELS, 19 MAY 2008

## ANNEX A

### AMENDMENTS TO THE AGREEMENT ON THE ORGANISATION OF WORKING TIME OF SEAFARERS CONCLUDED ON 30 SEPTEMBER 1998

In their discussions leading to the conclusion of their Agreement on the Maritime Labour Convention, 2006, the Social Partners additionally reviewed the Agreement on the Organisation of Working Time of Seafarers concluded on 30 September 1998, in order to verify that it was consistent with corresponding provisions of the Convention and agree any necessary amendments.

As a result, the Social Partners have agreed the following amendments to the Agreement on the Organisation of Working Time of Seafarers:

#### 1. Clause 1

Insert new paragraph 3:

“3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners’ and seafarers’ organizations concerned with this question. In this context due account shall be taken of the Resolution of the 94<sup>th</sup> (Maritime) Session of the General Conference of the International Labour Organization concerning information on occupational groups.”

#### 2. Clause 2 (c)

Replace Clause 2 (c) with:

“(c) the term *seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;”

#### 3. Clause 2 (d)

Replace Clause 2 (d) with:

“(d) the term *shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.”

#### 4. Clause 6

Replace Clause 6 with:

“1. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Clause, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.

2. An exception to strict compliance with the night work restriction may be made by the competent authority when:

- (a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or
- (b) the specific nature of the duty or a recognized training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, that the work will not be detrimental to their health or well-being.

3. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardize their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organizations concerned, in accordance with relevant international standards."

## **5. Clause 13**

Replace Clause 13 (1) first sentence with:

"1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.

2. Exceptions can only be permitted as prescribed in this Agreement.

3. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.

4. In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organizations concerned, and giving due consideration to applicable international guidelines, prescribe the nature of the medical examination and certificate.

5. This Agreement is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended ("STCW"). A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of paragraphs 1 and 2 of this Clause. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.

6. The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.

7. Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given

the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.

8. Each medical certificate shall state in particular that:

- (a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and
- (b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

9. Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:

- (a) a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;
- (b) a certification of colour vision shall be valid for a maximum period of six years.

10. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

- (a) the period of such permission does not exceed three months; and
- (b) the seafarer concerned is in possession of an expired medical certificate of recent date.

11. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.

12. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.”

The subsequent sentences of Clause 13 (1) and paragraph 13 (2) become paragraphs 13 to 15.

## **6. Clause 16:**

Replace first sentence with:

“Every seafarer shall be entitled to paid annual leave. The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment and *pro rata* for incomplete months.“