



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

**under Article 138(2) of the EC Treaty on the strengthening of
maritime labour standards**

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This Communication comes in the wake of the International Labour Organisation (ILO) 2006 Convention on maritime labour standards (hereafter called the 2006 consolidated Convention) which was adopted almost unanimously in Geneva on 23 February 2006. That 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 has actively supported the work of preparing this instrument from the outset. Moreover, it obtained negotiating directives by Council decision of 21 April 2005 to act alongside Member States to safeguard the Community acquis during ILO negotiations.

Now that the Convention has been adopted, the Commission considers it essential to mobilise sufficient means to implement it at both Community and national level.

In the Commission's view, it is vital to consider the Community legislative framework regarding the social standards applicable to seafarers in order to increase the competitiveness of the maritime sector, make the profession more attractive and, in the long term, preserve European expertise in this area. Moreover, it announced in its 2006 work programme¹ a communication on minimum maritime labour standards which will consider whether to propose legislative measures aimed at strengthening the application of international labour standards for seafarers in the European Union, possibly by means of an agreement between the social partners.

Underlining the importance of 2006 consolidated Convention, this Communication seeks to launch the first official phase of consulting the social partners under the procedure provided for in Article 138(2) of the Treaty establishing the European Community on the question of whether the relevant provisions of that Convention should be incorporated into Community law. The Commission will subsequently consult the social partners, where appropriate, on the content of any proposal put forward under Article 138(3) of the EC Treaty.

¹ COM(2005) 531 final of 28 March 2006: "Unlocking Europe's full potential. Commission legislative and work programme 2006".

I. BENEFITS OF THE CONVENTION

1. Promoting a universal Maritime Labour Code and innovative methods

Consolidation work began in 2001 at the ILO with the aim of drawing up a comprehensive and integrated international convention defining clear, simple, modern and universal social labour standards. This revision of the existing legal framework to make it more effective should increase the rate of ratification by the Member States of the ILO. It is important that the Member States of the European Union and third countries ratify the Convention as soon as possible so that it can be fully effective and lead to the definition of more uniform reference rules.

The 2006 Consolidated Convention, which is intended to replace almost all other ILO maritime conventions, will become very significant from a legal and political point of view once it has been ratified by individual States, particularly those with a maritime tradition.

It lays down the labour standards applicable to the crews of vessels with a gross tonnage of 500 tonnes or more engaged in international voyages or sailing between foreign ports.

The Convention groups a number of provisions by themes under five different titles and aims to guarantee decent living and working conditions on board vessels. Title 1 defines the minimum conditions required for maritime labour, covering health, training, minimum age, and recruitment. The employment conditions set out in Title 2 fix the content of the employment contract, working hours, wage protection, and the rights to leave, repatriation and compensation in the event of the loss of the vessel. Accommodation on board is covered in Title 3 and social protection in Title 4. Title 5 of the Convention also defines the responsibilities regarding application of the Convention, i.e. requiring Flag States to put in place effective arrangements for applying the Convention based on a system of certification, and Port States and States providing labour to ensure compliance with the standards of the Convention by means of appropriate inspections. Each title contains regulations in two sets of hierarchical standards, Code A corresponding to a binding part and Code B a non-binding part, containing provisions aimed at helping with the interpretation of the binding rules.

The importance of the Convention also lies in the innovative mechanisms, from an ILO perspective, that it uses to ensure that the instrument is fully effective. It introduces the maritime labour certificate and maritime labour declaration which, unless there is proof to the contrary, attest to conformity with the rules of the Convention. Thus, a certificate will be issued by a State to vessels flying its flag after verification that the on-board working conditions conform to national laws and the regulations arising from the Convention. A declaration will be attached to the certificate outlining the national legislation applicable in a predetermined list of areas covered by the Convention. Under these conditions, the system of certifications guaranteeing conformity with the Convention can be checked by the Port State which will be able, in cases of doubt, to inspect vessels (and detain them if necessary) not only for safety or environmental shortcomings but also for reasons linked to employment conditions.

In order not to penalise those States which have ratified the Convention compared with those which have not, the clause precluding more favourable treatment will ensure that vessels flying the flag of a State which has not ratified the Convention do not receive more favourable treatment than those flying the flag of a State which has ratified it. This clause should prevent unfair competition and encourage practically all States to ratify the Convention.

Moreover, the Convention creates an *ad hoc* structure, the Special Tripartite Commission, made up of representatives appointed by the governments of each State which has ratified the Convention and representatives of shipowners and seafarers to adapt the text in the light of the application of its provisions.

2. Managing globalisation and guaranteeing fairer conditions of competition

The 2006 consolidated Convention complements the three basic Maritime Conventions adopted under the aegis of the International Maritime Organisation, the SOLAS Convention (safety of life at sea), the MARPOL Convention (prevention of pollution of marine environment) and the STCW Convention on the qualifications of seafarers. It constitutes the fourth pillar of international regulation of the maritime sector.

The 2006 consolidated Convention should help to stabilise the maritime transport sector in the face of global competition and reduce the double gap between, firstly, European and third country operators and, secondly, between the different flags which favours *de facto* those maritime nations and operators with the least stringent social legislation. There is constant pressure from the threat of relocation of recruitment of seafarers to the detriment of European jobs, including in intra-Community transport. It must be acknowledged that the financial stakes are high, given the vast economic and legal differences affecting labour costs, including wages and social charges, in global maritime transport.

Moreover, the Commission considers that it is important to normalise the status of seafarer in the context of globalisation in order to limit its harmful effects, namely social dumping which penalises seamen and shipowners complying with the rules in force, and to define decent working conditions in line with the communication on the social dimension of globalisation which makes express reference to the Convention on maritime labour.² Support for the ratification and entry into force of the Convention would represent an important contribution to the Commission's commitment to promote decent labour standards worldwide, as presented in its recent communication on the matter.³

Finally, as the Commission stressed in its recent communication to the European Council⁴ "global interdependence gives new opportunities to project European values and interests". It also reaffirmed the importance of the Union helping to promote high standards throughout the world, including in the social sphere.

² COM(2004) 383 final of 18 May 2004: "The social dimension of globalisation – the EU's policy contribution on extending the benefits to all".

³ 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 ».

⁴ COM(2006) 211 final of 10 May 2006: "A citizen's agenda delivering the results for Europe".

3. Improving maritime safety and the attractiveness of the profession

The Commission had already mentioned the importance of social standards and their connection with maritime safety in its communication of 6 April 2001⁵ stressing that 80% of maritime accidents were linked to human error. Faced with the many causes of accidents, the European Commission considers that it is essential to have minimum global social standards in a coherent framework which has hitherto been lacking and that a positive effect on maritime safety will become apparent once the Convention has entered into force.

Moreover, a BIMCO survey⁶ shows that there is a shortage of 17 000 Community seafarers in EU 25. This calls for appropriate responses from the public authorities and operators in a strategic sector such as maritime transport which carries 90% of world trade and 40% of intra-Community trade.

Another human factor to be taken into consideration is training. Efforts have been made regarding qualifications through the recognition of training and the incorporation of the STCW Convention into Community law. Qualifications and working conditions are complementary. The profession of seafarer must be promoted by recognising high-quality training and making occupations more attractive through decent working and living conditions. It is essential to make the maritime profession more attractive to counter this downward trend as an employer, which is harmful in the long term for the maritime sector as a whole, including activities linked to Port State control.

To achieve this, it is necessary to combat unfair practices on board ships and establish decent working and living conditions for seafarers, whatever the flag of the vessel and the nationality of the crew. To this extent, the Convention can help to bring about more homogeneous employment conditions for the benefit of seafarers.

II. ROLE OF THE EU IN THE PREPARATION AND IMPLEMENTATION OF THE CONVENTION

1. Dynamic role during preparatory work

The Commission gave full support to the ILO work from the outset, convinced of the importance of this attempt to eliminate unfair competition and improve social standards at world level through the introduction of universal minimum standards. It has followed this major task very closely, assuring, with the Presidency of the Union, regular coordination of the positions of the Member States on the provisions of the Convention under the mandate of 21 April 2005 granted by the Council. It has also made an exceptional financial contribution to the ILO and has therefore contributed to the success of the work leading to the adoption of the Convention under favourable conditions. This said, this collective success would not have been possible without the individual commitment of the Member States and the very active role of the social partners.

⁵ COM(2001) 188 final of 6 April 2001: “Communication from the Commission to the Council and European Parliament on the training and recruitment of seafarers”.

⁶ BIMCO/ISF Manpower 2005 update December 2005.

The added value of the EU in the negotiations was recognised at the ILO by third countries and the social partners. The Director-General of the ILO emphasised the fact in his statement during the maritime session of the International Labour Conference in February 2006.

However, the Commission regrets the fact that the Member States did not wish to go further under the mandate which also sought to explore the possibility of presenting amendments during the negotiations on the Convention in order to mention the specific role of regional economic integration organisations.

From a legal point of view, the absolute priority was to ensure that the text of the Convention and Community law are compatible in order to avoid any obstacle to ratification, particularly as regards the coordination of social security systems, a matter of exclusive Community competence. A safeguard clause had therefore to be adopted on social security in order to maintain the Community system for coordinating social security schemes. A Council decision authorising ratification of the Convention by the Member States is also required, as was the case for Convention 185, given the powers relating to the coordination of social security schemes and Port State control at Community level on all aspects governed by the Convention.

2. Encourage and expedite ratifications

Continuing with its efforts, the Commission will endeavour to encourage ratification processes to ensure that the Convention enters into force as soon as possible.

Given that the conditions for entry into force laid down by the 2006 consolidated Convention call for 30 States accounting for at least 33% of world tonnage and that the 27 States of the EEA total 28% of the world fleet, the European Union can have a motor effect. For this reason the Commission will encourage rapid ratification by the Member States. Moreover it will make Member States aware of the importance of ratifying this pioneering text.

3. Improve Community standards

The European Commission considers that the inclusion of the human factor in the 2006 consolidated Convention which establishes a balance between the obligations taken on by shipowners and governments so that seafarers enjoy decent working conditions is of utmost importance. The Commission considers that if the relevant provisions of the Convention were incorporated into Community law, the Community acquis on maritime safety would benefit from the means of making competition conditions fairer in the interests of all parties.

In this case, the 2006 consolidated Convention has many consequences since it covers a wide range of factors. The potential effects of the entry into force of the standards laid down by the Convention on Community law are the subject of an impact assessment which has already been launched by the Commission. Consideration is being given to legal and institutional questions as well as the economic and social aspects, in terms of costs and benefits, which will be the subject of an external analysis. The following are among the main questions that arise:

1. Adapt Community acquis: This step will probably be essential to update the texts directly affected by the provisions of the 2006 consolidated Convention (e.g.: Directives 1995/21⁷ and 1999/95⁸).

2. Adopt additional texts: The question is whether legislation should be adopted on those areas governed by the Convention but not covered, or only partly covered, at Community level (e.g.: regulation of recruitment agencies, requirement that an employee possess a signed contract of employment).

3. Go beyond the provisions of the Convention: the 2006 consolidated Convention only lays down minimum standards and there is nothing to exclude action at Community level to strengthen, complement or extend these standards by means of additional rules not laid down by the ILO.

Other questions should also be tackled such as:

4. Make Part B of the Convention binding: Following on from point 3, there is the legitimate question of whether there should be a harmonised and legally binding interpretation at Community level to guarantee more uniform application of the Convention and reduce the risks of differences between possible interpretations in the Union.

5. Reflect the tripartite structure: At institutional level, consideration must be given to the consequences of setting up the monitoring commission provided for by the Convention (Article XIII). Given the existence of this new body and its role, should there also be a specific structure, subordinate to that of the ILO Convention, to reflect the tripartite nature at Community level in the framework of the integration of the Convention standards?

This consultation forms part of the procedure provided for in Article 138 of the Treaty. Before presenting proposals on social policy, the Commission consults the social partners on the possible direction of Community action. The social partners may, on this occasion, decide to initiate negotiations with a view to signing an agreement and request the Commission to propose a Council decision to implement it. Otherwise, the Commission, where appropriate, continues its work on the proposal in question.

The reference to an agreement between the social partners in the Commission work programme for 2006 relates to the precedent set by the inclusion of the provisions of ILO Convention 180 on working time through the adoption of the two Directives⁹. Two directives were necessary given that an agreement of social partners could only be implemented by Council decision for matters defined by Articles 137 and 139 of the Treaty. The social partners are, of course, free to determine the content of their negotiations and of any

⁷ Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (Port State control).

⁸ Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers hours of work on board ships calling at Community ports.

⁹ Council Directive 1999/63/EC of 21 June 1999 concerning the agreement on the organisation of the working time of seafarers and Directive 1999/95/EC referred to above.

autonomous agreement but implementation by Council decision must take account of the conditions laid down by Article 139. The Commission considers that this consultation procedure could lead to the application of Article 139 of the Treaty which would appear all the more justified given the ambitious nature of the 2006 consolidated Convention.

III. CONCLUSION

The social partners have already been made aware of all of these questions at regular meetings held as part of the social dialogue in the maritime sector.

This communication constitutes the first phase of consultation provided for in Article 138(2) of the Treaty. The social partners are therefore requested to give their response to the following two questions:

- Is it necessary or advisable to develop the existing Community acquis by adapting, consolidating or complementing it in accordance with the guidelines set out in part II of this Communication or any other arrangements?
- Could the social partners consider entering into negotiations with a view to reaching an agreement to be implemented by means of Council decision, in accordance with Article 139 of the Treaty?

Where appropriate, the social partners will be consulted as part of a second phase on the content of any proposal considered by the European Commission.