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**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)**

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1. INTRODUCTION

The Green Paper “Towards a future maritime policy for the Union”¹ raised the issue of the exclusion of maritime sectors from parts of the European labour and social legislation and of its reassessment in close cooperation with the social partners.

In the context of other actions aimed at enhancing the social dimension of maritime Europe² and promoting the competitiveness of the EU maritime sector, taking into account the demands of the stakeholders and in particular of the European Parliament and European Economic and social Committee, the Commission wishes to examine whether current Community legislation ensures appropriate levels of protection to seafaring workers and if improving them could render EU maritime sector more attractive for job seekers³ without undermining its competitiveness.

The present Communication reviews the pertinent legislation in order to identify exclusions or derogations affecting workers in maritime professions and difficulties of interpretation of this legislation. It seeks to determine, against the background of the already extensive body of international conventions and standards, to what extent action may be needed to improve legal protection for maritime professions in the EU. Finally, it launches a consultation of the social partners in the light of Article 138(2) of the Treaty, on the possible orientations of Community action.

The focus on the regulatory framework inevitably narrows the scope of analysis to those professions subject to lower levels of protection under EU law, and/or where major problems have been detected, i.e. workers in the shipping and fisheries sector.

¹ COM(2006) 275, 7.6.2006.

² E.g. a Communication on Ports Policy will be adopted in the context of a maritime policy with a chapter addressing working conditions and social dialogue in ports.

³ The European Parliament in Resolution of 11 July 2007 (2007/2023(INI)), "requests that all workers have access to the same level of protection and that certain groups are not excluded by default from the broadest level of protection, such as is currently often the case for seafarers, workers on vessels and offshore workers". The European Economic and Social Committee "notes the exclusion of fishermen and seafarers from European social legislation on a number of issues (eg: the Directive on collective redundancies, on transfer of undertakings, on information/consultation and for posting of workers in the framework of the provision of services). Irrespective of the reasons behind these exclusions, it is important to put an end to that discrimination where appropriate. It, therefore, invites the Commission to reassess these exclusions in close cooperation with social partners" (paragraph 1.7 of TEN/255 CESE 609/2007, 3 April 2007).

The economic and social importance of the issue at stake is very significant. In 2005, the total number of seafarers from EU-27 countries was estimated at 204 400⁴ and the number of fishermen employed in EU-25 was of approx. 190 000 – 195 000. Several contributions to the consultation have confirmed shortage of qualified staff to man European vessels.

2. INTERNATIONAL FRAMEWORK

Most maritime sectors operate in a highly globalised context. The increasing economic globalisation and the internationalisation of the workforce, combined with sometimes insufficient enforcement, have eroded the effectiveness of the existing international standards and affected maritime safety at global level, contributing to a strong increase in inequalities in living and working conditions of maritime workers. The EU is strongly pushing efforts in global fora to strengthen the international regulatory regime. This has resulted in the successful adoption of the *ILO Maritime Labour Convention, 2006*⁵, and of the *ILO Work in Fishing Convention, 2007*⁶.

The new international standards introduced by these Conventions are relevant for updating and completing EU internal and external policies including social standards as they consolidate and update existing international law in a very wide range of fields, providing for a comprehensive set of rules on compliance and enforcement.

The implementation of provisions of the *ILO Maritime Labour Convention, 2006*, on compliance and enforcement is crucial for the creation of a global level playing field in maritime transport. It should also be noted that the third maritime safety package reviews some rules of port state control to reinforce this control in respect of labour standards, including the treatment of complains formulated by the crew⁷.

The Council adopted a Decision on 7 July 2007 authorising Member States to ratify *ILO Maritime Labour Convention, 2006* in the interests of the European Community, preferably before 31 December 2010⁸.

The Commission also plans to present a proposal for a Council decision authorising and encouraging prompt ratification by EU Member States of the *ILO Work in Fishing Convention, 2007*⁹.

In recent years the ILO and IMO have also taken initiatives to improve security standards. In 2003 the ILO adopted Convention No 185 updating the seafarers'

⁴ Bimco/ISF Manpower Studies 1995-2005.

⁵ The Maritime Labour Convention, 2006, aims to become the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organisation (IMO). It “consolidates” and updates the existing international law (68 instruments), with the exception of the recent seafarers identity document convention (No 185) and the seafarers pensions convention (No 71).

⁶ This convention revises four existing conventions and complements them with other provisions, for example, on health and safety at work and on compliance and enforcement including a valid compliance document, inspection and both flag-state and port-state control.

⁷ COM(2005) 588, 23.11.2005.

⁸ OJ L 161, 22.6.2007.

⁹ Both the 2006 and the 2007 ILO conventions affect exclusive EC competences.

identity document (seafarers' ID – Convention No 108) to facilitate shore leave and transit for seafarers. The Council authorised the EU Member States to ratify it¹⁰, and the Commission has also been encouraging them to ratify and implement it.

The EC Fishing Partnership Agreements (FPA) with developing countries also promote decent working and living conditions by including social clauses.

3. EU LEGISLATION ON WORKING CONDITIONS AND INFORMATION AND CONSULTATION

Four situations exist as regards the coverage of seafarers and/or fishermen by the EU legislation on working conditions and the information and consultation of workers (hereinafter "IC"):

- Non-exclusion (i.e. lack of specific provisions or derogations). In directives on fixed-term work, part-time work, health and safety of workers on fixed-term or temporary agency contracts, information on the conditions applicable to the employment contract or relationship and the participation of workers in European Companies and European Cooperatives.
- Specific legislation or general instruments containing specific provisions. In the Directive on organisation of working time (while the main Directive¹¹ excludes seafarers from its scope of application, it also provides for a specific regulation concerning fishermen) or the Directive on the work of young people¹² (with differentiated specific possibilities of derogation concerning the sector).
- The possibility for Member States to introduce exclusions in their national legislation when transposing directives. In the European Works Council Directive (the Directive on information and consultation and the Directive on protection of employees in case of insolvency).
- Exclusion from the scope of application. In the Directive on collective redundancies, transfer of undertakings and posting of workers.

The directives falling under the last two situations call for a more detailed analysis.

¹⁰ Council Decision of 14 April 2005 (OJ L 136, 30.5.2005, p. 1). The new Community border code of 15 March 2006, contains a reference to this convention.

¹¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

¹² Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work; Member States may under certain conditions authorise night work and make derogations from the rules on daily and weekly rest in relation to adolescents working i.a. in the shipping sector (Articles 9.2 and 10.4).

a) Council Directive 2002/74/EC¹³ - Protection of employees in the event of the insolvency of their employer

Article 1(2) allows Member States to exclude claims by certain categories of employees from its scope to the extent that other forms of guarantee exist which provide adequate protection for employees in the event of the insolvency of their employers. While this provision does not make specific reference to the seafaring professions, Member States might use this possibility regarding them.

Article 1(3) allows Member States that already excluded share-fishermen from their equivalent national legislation when the Directive entered into force to maintain such exclusion.

Only six Member States¹⁴ used exclusion possibilities under Articles 1(2) and/or 1(3)(b) of the Directive. It should be reassessed whether the exclusions remain justified in case of these Member States, and whether other forms of protection afforded in such cases have indeed proved to be equivalent.

b) Council Directive 94/45/EC¹⁵ - European Works Councils

This Directive does apply to crews of fishing vessels falling within its general scope of application. However, Article 1(5) states that "*Member States may provide that this directive shall not apply to merchant navy crews*".

One reason for such a derogation¹⁶ was that in general these crews work at a great distance from one another and from the management, thus making it very difficult to bring them together for consultation.

Six Member States have made use of this provision¹⁷. In two others¹⁸, the exclusion is due to the fact that specific legislation exists, while in three other Member States¹⁹ there are mechanisms to adapt the implementing legislation to seafarers.

The option to exclude merchant navy crews needs to be re-examined, as: (i) the highly internationalised workforce needs transnational information and consultation procedures, (ii) the majority of the Member States make no use of this option, (iii) the provisions of the Directive are flexible (the information and consultation mechanisms are negotiated in order to adapt them to company characteristics).

¹³ Directive 2002/74/EC of the European Parliament and the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

¹⁴ EL, IT, HU, MT, SK, UK.

¹⁵ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64).

¹⁶ See Working paper 15 of the working party that prepared the transposition of the 94/45/EC directive. However it was also stated that "it would seem adequate not to exclude crews of ferry boats covering only smaller distances". The exclusion was not provided for in either the proposal of the Commission COM(94) 134 or the amended proposal COM(94) 228.

¹⁷ CY, EE, EL, HU, IT, LV.

¹⁸ LT, MT.

¹⁹ DK, NL, UK.

Nevertheless the specific working patterns of seafarers will always need to be taken into account. One possible option is to change the existing possibility of exclusion into an authorisation to adapt the national provisions to the specific situation of merchant navy crews, particularly long-haul crew members, as some Member States do already.

c) Directive 2002/14/EC²⁰ - Information and consultation

Under Article 3(3), "*Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas*".

The reasons raised by the Member States to justify the exclusion were similar to those regarding Directive 94/45/EC: the difficulty in applying information and consultation procedures on board ships operating far away from an undertaking's seat and the fact that seafarers' contracts are frequently short-term.

Here however the exclusion is not unconditional in that it obliges Member States to provide for "particular provisions". It thus cannot take the form of a simple absence of regulation or imply a different level of protection. Eight Member States²¹ made use of the option under Article 3(3), but only three of them²² introduced particular provisions applying to crews falling within the scope of the derogation. The Commission will examine the legal conformity of such particular provisions in a forthcoming report on the implementation of this Directive.

d) Council Directive 98/59/EC²³ - Collective redundancies

Article 1(2)(c) of the Directive states that it does not apply to the crews of seagoing vessels.

In the explanatory memorandum attached to its proposal for the revision of Directive 75/129/EEC²⁴ in 1991, the Commission considered that "the information, consultation and notification requirements laid down in this Directive are in no way incompatible with the special nature of the contract of employment or employment relationships of the crews of sea-going vessels. Their exclusion from the protection provided by the Directive is not justifiable, unless they are covered by other forms of guarantee offering them protection equivalent to that resulting from the Directive".

The reference to other forms of guarantee offering equivalent protection was opposed during the discussions in the Council.

Therefore, there are reasonable grounds for re-examining the terms under which the Directive deals with the protection of the rights of crews of sea-going vessels²⁵.

²⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

²¹ CY, DE, DK, EL, FR, MT, RO, UK.

²² DE, DK, UK.

²³ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16).

²⁴ COM(91) 292.

²⁵ E.g. ES, FR, LT, EE, CZ, SI, PL already do not make use of this exclusion.

e) Council Directive 2001/23/EC²⁶ - Transfers of undertakings

Article 1(3) of the Directive excludes sea-going vessels in general.

Neither the original Commission proposal (COM(74) 351) nor the amended proposal of 25 July 1975 (COM(75) 429) contained any specific reference to seagoing vessels. However, as adopted on 14 February 1977 (Directive 77/187/EEC), the Directive contained already the exclusion which appears to have been prompted by a similar exclusion in the collective dismissals directive.

The Commission considered in 1994 in its proposal for revision of Directive 77/187/EEC²⁷ that seagoing vessels could be excluded from the information and consultation rights granted by the Directive but not from its fundamental provisions, i.e., the maintaining of the employees' rights existing at the moment of the transfer. This position was not accepted, however, by the Council.

On the face of it, there does not seem to be any specific reason to maintain this exclusion. In particular, the provisions of the Directive for safeguarding employees' rights do not appear to be incompatible with the special nature of the employment contracts or relationships on sea-going vessels. As to information and consultation rights, the approach should be consistent with that to be adopted for Directives 2002/14/EC and 98/59/EC.

It is worth noting considerable number of Member States²⁸, including some of the largest shipping countries, have not chosen to exclude seagoing vessels from the scope of national legislation implementing the Directive. It is therefore obvious that this issue requires further attention.

f) Directive 96/71/EC²⁹ - Posting of workers

Article 1(2) of Directive 96/71/EC provides: "*this directive shall not apply to merchant navy undertakings as regards seagoing personnel*".

Posted workers are defined in the Directive as workers who, for a limited period, carry out work in the territory of a Member State other than the State in which they normally work. Strictly speaking, seagoing personnel on a vessel plying in the high seas are not to be considered as being posted "to the territory of another Member State"³⁰.

In a previous report on the implementation of this Directive³¹ the Commission recognised that "*this exclusion is considered justified by the vast majority of Member*

²⁶ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

²⁷ COM(94) 300 .

²⁸ AT, CZ, DE, EE, ES, HU, IT, LT, PL, PT, SE, UK.

²⁹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

³⁰ The application of the law of the flag is generally based on the notion of nationality of a vessel (by analogy with the nationality of individuals) rather than assimilation to the territory.

³¹ COM(2006) 159.

States, given the specific nature of the itinerant work done by this group of workers and the practical difficulties associated with monitoring them". However, "the exclusion of these undertakings from the scope of the Directive does not exempt them from the application of the rules of private international law (Rome Convention)"³².

In conclusion, the definition of posting contained in Directive 96/71/EC does not seem to be applicable to seagoing personnel. The existing exclusion appears to reflect this reality and therefore to be justified.

4. EU HEALTH AND SAFETY LEGISLATION

EU legislation on health and safety at work applies to "*all sectors of economic activity, both public and private*"³³. Therefore workers in the maritime sector benefit from the same levels of protection as workers in other sectors.

Out of 28 directives governing this field, only two do not apply to the maritime sector:

- *Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace*³⁴;
- *Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment*³⁵.

Directive 89/654/EEC does not apply to means of transport used outside the undertaking and/or the establishment, or to workplaces inside means of transport and fishing boats. The reason for this exclusion was that these were particular workplaces, different from workstations in the premises of undertakings and/or establishments, and as such should be subject to specific regulation.

Moreover, the fishing sector being relatively accident prone, a special instrument was needed to tackle the specific risks and to promote the occupational health and safety of fishermen. For these reasons, the Council adopted Directive 93/103/EEC defining the minimum safety and health requirements for work on board fishing vessels.

International agreements and conventions are relevant to specify health and safety requirements to be met by sea-going vessels. In this respect, the *ILO Maritime Labour Convention, 2006* and the *ILO Work in Fishing Convention, 2007* will be particularly significant. However, it should be underlined that the Community provides efficient legal means to complement these international instruments where it is useful. Binding international codes and agreements sometimes contain more stringent and/or specific provisions than the EU health and safety at work legislation, and their application is expressly provided for in some directives. In these cases, it is

³² Report by the Working Party on the transposition of the Directive concerning the posting of workers.

³³ Article 2(1) 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 (OJ L 183, 29.6.1989, p. 1).

³⁴ OJ L 393, 30.12.1989, p. 1.

³⁵ OJ L 156, 21.6.1990, p. 14.

expressly stated that the provisions of the relevant directives apply without prejudice of such agreements and codes. In case of Directive 1999/92/EC³⁶, the sector in question is fully covered by such international agreements.

Accordingly the Commission committed itself in the Community strategy 2007-2012 on health and safety at work³⁷ to promoting health and safety at international level and to strengthening its cooperation with ILO, WHO and other international organisations for the establishment of higher levels of protection globally.

Two directives apply specifically to the maritime sector:

- *Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels*³⁸;
- *Directive 93/103/CE of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels*³⁹.

Directive 93/103/CE applies only to new fishing vessels (building contract placed after 23 November 1995) with a length between perpendiculars of 15 m or over and to existing fishing vessels with a length between perpendiculars of 18 m or over. A Report of the Commission on the practical implementation of the provisions of Directive 93/103/EC providing a thorough analysis of its impact on the protection of the health and safety of European fishermen and identifying the needs for action is due for adoption in 2008.

The exclusion of small vessels from the Directive is justified on the basis of the serious economic impact, including additional administrative burden, which the adoption of the Directive would have for small vessels.

However, there is still a need to remedy the persistently high level of work accidents in fishing. In particular, good practices, taking into account the specific nature of the work on board small fishing vessels, should be disseminated and practical guidance should be provided to both employers and workers in order to promote safer work practices.

5. FREE MOVEMENT OF WORKERS AND COORDINATION OF SOCIAL SECURITY SYSTEMS

5.1. Free movement of workers

Free movement of workers within the EU is one of the fundamental freedoms guaranteed by Community law. According to settled case law, the provisions in the EC Treaty on the free movement of workers are also applicable to maritime

³⁶ Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (OJ L 23, 28.1.2000, p. 57).

³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work - COM(2007) 62, p. 14.

³⁸ OJ L 113, 30.4.1992, p. 19.

³⁹ OJ L 307, 13.12.1993, p. 1.

transport. Even if the activities are carried out outside the territory of the Community, the provisions continue to apply to the worker concerned provided that the legal employment relationship can be located within the territory of the Community or retains a sufficiently close link with that territory⁴⁰.

5.2. Coordination of social security schemes

Community legislation on social security provides that workers and members of their families do not lose their social security protection when moving within the Community and ensures that the basic principles of equality of treatment and non-discrimination are respected by the Member States when applying their national social security rules.

The relevant legislation is laid down in Regulation (EEC) No 1408/71 and its implementing Regulation (EEC) No 574/72. These rules provide for the simple coordination of the social security systems of the Member States. For seafarers, Regulation (EEC) No 1408/71 contains specific rules concerning the legislation applicable. An EU national who is working on board a vessel flying the flag of a Member State is in principle subject to the legislation of that State. However, if the person concerned is working on board a vessel flying the flag of a Member State and remunerated for such employment by an undertaking that is registered or has its place of business in another Member State, the person is subject to the legislation of the latter, provided that he or she is resident in that State⁴¹.

The provisions of Regulation (EEC) No 1408/71 also apply to third-country nationals provided that they are legally resident in the territory of a Member State and are in a situation that is not confined in all respects within a single Member State (see Regulation (EC) No 859/2003).

However, these Community rules can only ensure a very partial protection of rights in the case of seafarers as: (i) they only apply to social security schemes of countries within the EU and EEA plus Switzerland; (ii) third-country nationals who are working on a vessel flying the flag of a Member State, but who are not legally resident in the Community or who are not in a cross-border situation as defined in Regulation (EC) No 859/2003, are not covered by this Community legislation. The question of whether or not they are entitled to social security coverage under the national legislation to which they are subject is solely a matter for the Member State(s) concerned.

Furthermore, the material scope of these rules is confined to social security schemes set up by national legislation. Exemptions apply to non-statutory complementary insurance schemes or special schemes for self-employed persons⁴² and collective agreements unless such agreements are rendered compulsory by national legislation. In the maritime and fishing sector, social security coverage is often part of the

⁴⁰ See e.g. Case 9/88 *Lopes da Veiga*, ECR (1989) 2989, Par. 15.

⁴¹ See Article 13(2)(c) and Article 14(b)(4). Unchanged in the new Regulation (EC) No 883/2004, which replaces Regulation (EEC) No 1408/71.

⁴² Under Regulation (EC) No 883/2004, special schemes for self-employed persons lose their special status and will also be covered by the Regulation if they are rendered compulsory by national legislation.

employment contract and ensured by an international private insurance scheme. Workers can only invoke the provisions of Regulation (EEC) No 1408/71 where they are covered by statutory insurance under the national legislation to which they are subject. Thus, they can be faced with gaps in their social security rights. This is particularly the case for the acquisition of pension rights.

The *ILO Maritime Labour Convention, 2006* contains provisions on the minimum level of social security protection that each Member under its national law must provide to seafarers that are ordinarily resident in its territory. According to the *ILO Maritime Labour Convention, 2006*, this protection should not be less favourable than that enjoyed by shore-workers resident in its territory. Similar provisions are envisaged in the *ILO Work in Fishing Convention, 2007*. Once in force, they will ensure certain level of social security protection for workers in this sector. Further gains could be achieved by increasing the number of international agreements with third countries that include social clauses and equal treatment clauses.

6. THE ROLE OF SOCIAL DIALOGUE

The sectoral committees for maritime transport and sea fishing have regularly addressed topics with a view to improving safety and well-being on board.

Both committees have a long-standing commitment to decent working conditions in the context of globalisation and compliance with international legislative instruments for seafarers. The European social partners take an active part in the ILO and IMO, thereby contributing to a stronger European position and are very much committed in the follow up and implementation of the relevant international instruments.

In the maritime transport sector, the social partners are negotiating in view of reaching a European agreement transposing relevant provisions of the *ILO Maritime Labour Convention, 2006*. These negotiations were launched following a Commission's consultation of the social partners under Article 138(2) of the Treaty, launched in June 2006. If an agreement is reached and the social partners so request, a proposal for a directive on the basis of Article 139 ECT will be envisaged. Furthermore, a proposal for a directive concerning the enforcement of provisions in respect of maritime labour standards on board ships flying Community flags and all those calling at Community ports could also be envisaged. Such instrument will allow for a uniform application of the *ILO Maritime Labour Convention, 2006* by Member States to all ships, including those under third country flag following the entry into force of *ILO Maritime Labour Convention, 2006* in line with the principle of the no more favourable treatment vis-à-vis non ratifying countries.

The integration of international standards within EU law would promote a level playing field. The Commission invites therefore the social partners in the sea fishing sector to examine the possibilities of a joint initiative to promote the application within the EU of the provisions of the recent *ILO Work in Fishing Convention, 2007*.

7. CONCLUSIONS

The Commission will 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.

The Commission is also committed to improving the Community legal framework for workers in the seafaring professions. The analysis in the present Communication indicates that their exclusion from the scope of some directives might not be entirely justified insofar as they do not appear to contribute to the application of specific solutions, more adapted to the concrete situation of such workers.

Of particular concern are the rights of seagoing workers to protection in the case of insolvency of their employer or transfer of undertakings, where a coherent approach should be promoted in order to enable them to exercise their rights effectively both at national level and in Community-scale undertakings. The existing exclusions from the scope of the Directives regarding information and consultation also merit review.

Where sufficiently strong reasons exist to maintain the existing exclusions or derogations, consideration should be given to whether specific EU legislation for the sector would be the most appropriate solution to guarantee to seafaring professions the same level of protection enjoyed by other workers under the general directive.

In that case, the particular legal conditions applying in the Member States need to be examined in order to make sure that the seagoing professions enjoy adequate levels of protection, particularly in the cases of conditional exclusions, which oblige Member States to establish more specific regulation or alternative guarantees, ensuring the same level of protection.

Any future proposals concerning the reassessment of exclusions and/or derogations applicable to maritime sectors would be considered on the basis of a thorough analysis of their impact on the competitiveness of the EU seafaring industry. Moreover, account would be taken of the international standards and their interaction with EU rules.

Against this background, the social partners are requested to respond to the following questions:

1. Do you share the Commission's analysis of the justifications for the exclusions and derogations from EU labour legislation concerning seafaring professions?
2. Should the elimination of the exclusions that are no longer justified lead to the inclusion of seafaring professions within the general scope of application of the relevant directives? Which should be the priorities for action in this respect?
3. In the case of exclusions that you consider justified due to the particularities of the sector or other reasons, is an equivalent level of protection for seafaring professions guaranteed by other means? Do you consider that specific regulation within the relevant directive or a specific legal instrument of EU law for the seafaring professions could be warranted?

4. What means do you find more appropriate in order to enhance health and safety on board, in particular on small fishing vessels?
5. Taking into account the division of legal responsibilities between the Community and Member States as regards social security, what means of action do you consider more appropriate in order to improve the social security protection of workers in seagoing professions?

This Communication constitutes the first phase of consultation provided for in Article 138(2) of the Treaty. If, after the consultation, the Commission considers Community action advisable, it will consult the social partners on any proposal, as provided for by Article 138(3) of the Treaty.