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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.5.2008
COM(2008) 320 final

2008/0107 (CNS)

Proposal for a

COUNCIL DECISION

**authorising Member States to ratify, in the interests of the European Community, the
Work in Fishing Convention, 2007, of the International Labour Organisation
(Convention 188)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The Convention No.188 on work in the fishing sector of the International Labour Organisation (hereinafter called the ILO) was adopted in June 2007 by the ninety-sixth session of the International Labour Conference (hereinafter called 'Convention 188').

The adoption of Convention 188 became necessary after the adoption of the ILO consolidated Maritime Labour Convention (hereinafter called 'the MLC') in February 2006¹. The MLC excluded the fishing sector from its scope of application. In 2003, the ILO Office and the ILO tripartite constituents (governments, employers, workers) began working in 2003 on an updated and comprehensive international labour standard for the fishing sector that would provide appropriate protection for fishers around the globe and be widely ratified.

Convention 188 is aimed at establishing minimum international standards for the fishing sector. Therefore it revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126); it also covers other important issues such as health and safety at work, manning and hours of rest, crew list, repatriation, recruitment and placement, social security and compliance and enforcement.

Convention 188 is accompanied by Recommendation 199 on work in the fishing sector, which was adopted by the International Labour Conference of June 2007.

The ultimate aim of the 2007 Convention is to achieve and maintain a level playing field in the fishing sector by fostering the promotion of decent living and working conditions for fishers and fairer conditions of competition in the world and thereby to remedy the low rate of ratification of many conventions in the field of maritime labour.

The EU was very much involved in the negotiations and in the finalisation of Convention 188 through EU coordination. The consistency and compatibility between the ILO provisions and the Community acquis was followed-up in the EU coordination during the discussions in 2004, 2005 and 2007. This was particularly relevant for some areas of the Convention that fall within the Community's exclusive competence, namely the coordination of social security schemes that flows from Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security system schemes to employed persons and their families moving within the Community adopted pursuant to Article 42 of the EC Treaty. Articles 13(2)(c) and 14 b of Regulation (EEC) No 1408/71 create specific provisions for seafarers and fishers.

¹ The Council authorised the Member states to ratify the MLC by Decision 2007/431/EC of 7 June 2007 (OJ L 161, 22.6.2007, p. 63).

The application of Regulation (EEC) No 1408/71 was extended to third country nationals by Regulation (EC) No 859/2003 of 14 May 2003. This Regulation lays down the rules applicable to third country nationals and provides them with the same social security protection rights as EU nationals when moving within the European Union. Regulation (EEC) No 1408/71 will be replaced in due course by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, once the new draft Implementing Regulation is adopted.

In the ILO text, both the flag state and the state of residence have responsibilities, but for different areas of social security coverage, whereas under EC law, the flag state is, as a rule, designated as the country whose social security legislation should apply pursuant to Regulations (EEC) No 1408/71 and (EC) No 883/2004.

To regulate potential conflicts of law between the 2007 Convention and the EC law *acquis* on the coordination of social security schemes, a safeguard clause was included in the text (Art. 37). The aim of this clause is to safeguard and ensure the precedence of EC law on the coordination of social security schemes in cases where the Convention leads to an outcome which differs from the relevant EC rules.

In accordance with the AETR case law of the Court of Justice on external competence, Member States are not able to ratify the 2007 Convention without Community authorisation as its provisions concerning the coordination of social security regimes affect the exercise of the Community's exclusive competence in this area.

In this context, and in order to ensure compliance with the sharing of competences between the Community and Member States as laid down by the Treaty, the Commission proposes that the Council should authorise the Member States to ratify Convention 188 in the interests of the Community.

- **General context**

Convention 188 is in line with the mandate of the ILO, which includes the establishment of international labour standards for the fishing sector with a view to promoting decent work for fishers. Convention 188 takes into account the fact that fishers, given the specific nature of the sector and its specific working and living conditions, need special protection.

The Convention sets out nine separate groups of standards: (I) definitions and scope, (II) general principles, (III) minimum requirements for work on board fishing vessels, (IV) conditions of service, (V) accommodation and food, (VI) medical care, health protection and social security, (VII) compliance and enforcement, (VIII) amendment of the Annexes I, II and III and (IX) Final provisions.

For its implementation, Convention 188 requires both flag States and port States to put in place a compliance and enforcement system. The Convention also lays down a "no more favourable treatment" clause to ensure that the ships of States that have not ratified the Convention do not receive more favourable treatment than fishing vessels flying the flag of a State that has ratified it.

There is a substantial Community *acquis* deriving from Articles 42, 71, 137 and 138 of

the Treaty on a wide range of issues covered by the MLC. Issues of shared competence affected by the 2007 Convention form the bulk of the text's provisions. Community competence has been exercised inter alia in fields such as labour law, working conditions, safety and health protection, accommodation and the safety requirements for the construction and maintenance of fishing vessels. The EU Fisheries Partnership Agreements (FPA) with third countries also contain a social clause that refers to ILO standards.

The EU's Blue Book for maritime policy (An integrated maritime policy for the European Union) supports the ratification and application of international labour conventions for the maritime sectors including Convention 188.

- **Existing provisions covered by the proposal**

There are no existing provisions in the area covered by the proposal.

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

Not applicable

2. **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

Not relevant

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Not relevant.

Therefore, there is no need to consider several options.

3. **LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The application of Community rules in areas covered by Convention 188 should be preserved and a clear signal should be given to the rest of the world regarding the importance that the Community attaches to Convention 188 and to the working and living conditions of fishers.

Unlike other international fora, the ILO's operating rules do not include a process of formal signature before ratification. In the ILO context, signature is replaced by a voting procedure leading to adoption, which is equivalent to signature. The Convention under consideration was adopted by a vote on 14 June 2007 at the International Labour Conference, but has yet to enter into force. Even if only States may accede to the

Convention, it remains the case that the Commission on behalf of the European Community was closely involved in the preparation and negotiations through the European Union coordination.

Given the tripartite nature of the ILO, governments, employers' and workers' delegates took part in the negotiations and voted for the adoption of Convention 188. The Commission also facilitated EU coordination by organising, in cooperation with the EU presidency, meetings of Member States' experts and consultations with EU and international social partners. The Commission was present as an active observer. It should be noted that it is necessary for this Convention to enter into force at the earliest opportunity.

In view of the fact that competence for coordination of social security schemes lies with the Community, Member States cannot ratify the Convention without Community authorisation. The Commission proposes that the Council should authorise Member States to ratify Convention 188 in the interests of the Community.

The proposed Decision will therefore enable and encourage Member States to take all the steps necessary for ratification without further delay.

- **Legal basis**

Article 42 of ECT

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. Therefore the subsidiarity principle does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Not relevant

Not relevant

- **Choice of instruments**

Proposed instruments: other

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

Not relevant and not adequate

4. BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

5. ADDITIONAL INFORMATION

- **Detailed explanation of the proposal**

Not relevant

Proposal for a

COUNCIL DECISION

authorising Member States to ratify, in the interests of the European Community, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention 188)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 42 in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) Convention No. 188 of the International Labour Organisation (hereinafter referred to as 'the Convention' and 'the ILO' respectively) on work in the fishing sector was adopted on 14 June 2007 by the maritime session of the International Labour Conference of the ILO, which convened in Geneva and at which all EU Member states delegations voted in favour of the adoption⁴.
- (2) The Convention represents a major input to the fishing sector at international level in promoting decent work for fishers and fairer competition conditions for fishing vessel owners and it is therefore desirable that its provisions should be implemented as soon as possible.
- (3) The Commission, the Council and the European Parliament are promoting the ratification of international labour conventions that are classified by ILO as up-to-date as a contribution to the EU's efforts to promote decent work for all in the EU and outside the EU⁵.
- (4) Article 19, paragraph 8, of the ILO Constitution states that "in no case, shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or

² OJ C p

³ OJ C p.

⁴ ILO, International Labour Conference, Provisional Record, Ninety-sixth Session, Geneva, 2007 nr. 12 and nr. 25

⁵ COM(2006) 249 final and Sec(2006) 643; Council Conclusions of 30 November - 1 December 2006, 2767th meeting; European Parliament resolution of 23 May 2007 on promoting decent work for all.

agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation".

- (5) Some provisions of the Convention fall within the Community's exclusive competence as regards the coordination of social security schemes.
- (6) The Community cannot ratify the Convention, as only states can be parties thereto.
- (7) The Council should therefore authorise the Member States that are bound by the Community rules on the coordination of social security schemes based on Article 42 of the Treaty to ratify the Convention in the interests of the Community, under the conditions laid down in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to ratify, for the parts falling under Community competence, the Work in Fishing Convention, 2007, of the International Labour Organisation, adopted on 14 June 2007.

Article 2

Member States should make efforts to take the necessary steps to deposit their instruments of ratification of the Convention with the Director-General of the International Labour Office as soon as possible, preferably before 31 December 2012. The Council will review the progress of the ratification before January 2012.

Article 3

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council
The President*