

Opinion of the Committee of the Regions — Amendment of the directives on exclusions for seafarers

(2014/C 174/09)

Rapporteur	Mr Paul Lindquist (SE/EPP), Mayor of Lidingö
Reference document	Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC COM(2013) 798 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

1. welcomes the Commission's initiative to review the current exclusion rules relating to application of certain labour law directives to seafarers, and broadly endorses the current proposal for a directive;

Conclusions of the CoR

2. notes that a well-functioning maritime sector and labour market for seafarers are very important for coastal regions and their inhabitants in particular;

3. stresses how important it is for protection rules relating to Article 151 TFEU to apply as far as possible in the same way to all categories of workers in the Member States, and for there to be a level playing-field for the maritime sector within the EU regardless of which Member State operations take place in;

4. considers that individual Member States must be able to provide cogent and clear-cut reasons based on the specificities of current operations to justify derogations from employee protection rules under EU legislation;

5. believes the requirement to ensure equal treatment of employees must carry particular weight where there is a question of rights that are recognised in the European Union Charter of Fundamental Rights. As the Commission notes, this includes the right to information and consultation and the right to fair and just working conditions;

6. believes that an important consideration in assessing whether such an exclusion can be regarded as justified is the extent to which the Member States have applied the exclusion in question and the effects this has had on, for instance, competition in the maritime industry in the Member States that have decided to implement the directives so that the rules also apply to seafarers;

7. observes that no Member State has reported any significant negative effects, with respect for example to flagging out and general costs, resulting from the same rules being applied to seafarers and shore-based employees. Nor have Member States which have not excluded seafarers from the scope of the rules on information and consultation and other employee protection provisions in the current directives reported any competitive disadvantages against other EU countries that have applied one or more exclusions;

8. notes that because only certain Member States have made use of exclusions or derogations from the rules on information and consultation under the current directives, rules governing employers in the maritime sector vary depending on which Member State's flag a vessel is sailing under;

9. believes that the particular situation of maritime compared with land-based activities should still be taken into consideration, especially where purely practical difficulties arise in fully implementing a mandatory employee protection requirement owing to the particular nature of an activity, together with potential negative competition effects for EU businesses;

10. points to the 2006 ILO Maritime Labour Convention which came into force on 30 August 2013 and which has already been ratified by a large number of countries. With Directive 2009/13/EC, the EU implemented the agreement on the Convention concluded by the social partners in the maritime sector at EU level. This Directive ensured a minimum international standard for conditions of employment and recruitment of seafarers and created the basis for a level playing-field in the maritime industry as a whole. However, the directives which the Commission is now proposing to amend go further, containing additional rules on employee protection in relation to the Convention;

Assessment of the Committee of the Regions

11. notes that opting to exclude share-fishermen from the protection requirements under Directive 2008/94/EC would prevent this category of employee from enjoying the right to a guaranteed wage like other employees in the Member States, and considers that such discrimination cannot be regarded as justified by the specificities of the sector and should therefore be abolished;

12. notes that employees' right to information and consultation is a basic right contained in the EU Charter of Fundamental Rights, and believes that a high bar should be set for justifying the exclusion of certain categories of employee from the rights that other employees enjoy under EU law in this area;

13. agrees with the Commission's assessment that, partly in view of developments in communications technology, practical obstacles cannot be considered to exist that would in themselves justify an exclusion from applying the same rules for information and consultation to seafarers;

14. shares the Commission's view that exclusions, or special arrangements, should be abolished with respect to the right to information and consultation for seafarers under the current directives;

15. considers employee protection in the case of a transfer of an undertaking or of collective redundancies to be a special case, in view of the particular nature of the maritime sector. Buying and selling of ships is often integral to the business and it is general practice in the international market for vessels to be bought and sold without a crew;

16. notes that employer organisations and several Member States have pointed out that mandatory implementation of the protection provisions under Directives 2001/23/EC and 98/59/EC would entail increased costs for the maritime industry and competitive disadvantages compared with companies in non-EU countries, especially where buying and selling of vessels is part of the business. It has also been observed that applying protection requirements for purely practical reasons would be quite problematic;

17. considers that reservations based on the risks of putting EU businesses at a competitive disadvantage — even if Member States that also apply the protection requirements of the directives to seafarers have not reported any obviously negative consequences for competitiveness — should be taken seriously. Individual Member States are best placed to assess the impact of mandatory implementation of a given rule according to the practices and traditions applicable to the country's shipping industry;

18. considers that it should still be left to each Member State to decide, on the basis of local conditions, whether protection rules should apply to seafarers alongside the right to information and consultation in cases of transfer of an undertaking and collective redundancies, and to what extent these rules should apply;

19. shares the Commission's view that exclusions under Directives 2001/23/EC and 98/59/EC should be limited to situations in which the transfer of an undertaking consists solely in the sale of a vessel or where a collective redundancy is the result of a future sale of one or more vessels; with regard to the Collective Redundancies Directive, also shares the Commission's view that exclusions should only be possible with respect to the length of the 'cooling-off' period;

20. questions the proposal to amend Directive 98/59/EC by defining 'transfer' with reference to Directive 2001/23/EC, and sees no reason to allow derogations with respect to the 'cooling-off' period in Directive 98/59/EC on the grounds that the sale of a vessel constitutes a transfer of an undertaking within the meaning of Directive 2001/23/EC. Implementing the rules in this way would also produce considerable legal uncertainty because it is often difficult to judge in advance the extent to which the transfer of an undertaking constitutes a transfer within the meaning of Directive 2001/23/EC;

21. notes that the transition period proposed in Article 8 is quite long. Given that the proposal concerns the application of employee protection principles that are recognised in the EU Charter of Fundamental Rights, a shortening of the transition period should be considered during further discussion of the proposal;

Subsidiarity and proportionality

22. notes that the Directives to which the Commission proposal relates are intended to harmonise certain rules on employee protection in the EU and to create the basis for a level playing-field for businesses in the Union. The Directives can only be amended at EU level, and the Committee believes that the proposed changes comply with the subsidiarity and proportionality principles.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 5

Text proposed by the Commission	CoR amendment
The present legal situation gives rise to unequal treatment of the same category of workers by different Member States, according to whether they apply or not the exemptions and derogations allowed by present legislation. An important number of the Member States have made limited use of the exclusions.	The present legal situation gives rise to unequal treatment of the same category of workers by different Member States, according to whether they apply or not the exemptions and derogations allowed by present legislation. An important number of the Member States have made limited use of the exclusions. <u>The ILO Maritime Labour Convention of 2006 entered into force on 30 August 2013 and is intended to provide international protection for seafarers and to ensure a level playing-field within the maritime industry. The social partners reached an agreement on the Convention that was implemented by Council Directive 2009/13/EC.</u>

Reason

Work on the Directive should take account of joint efforts between the social partners and the EU that draw attention to protection for seafarers and endeavour to ensure a level playing-field within the maritime industry internationally.

Amendment 2

Article 4

Text proposed by the Commission	CoR amendment
Directive 98/59/EC is amended as follows: 1. Article 1 is amended as follows: (a) In paragraph 1, the following point (c) is added: '(c) 'transfer' is interpreted in the meaning of Directive 2001/23/EC.' (b) In Article 1(2), point (c) is deleted.	Directive 98/59/EC is amended as follows: 1. Article 1 is amended as follows: (a) In paragraph 1, the following point (c) is added: '(c) 'transfer' is interpreted in the meaning of Directive 2001/23/EC.' (b) In Article 1(2), point (c) is deleted.

Text proposed by the Commission	CoR amendment
2. In Article 3(1), a new second subparagraph is inserted: ‘When the projected collective redundancy concerns members of the crew of a seagoing vessel, the notification shall be made to the competent authority of the State of the flag which the vessel flies.’ 3. In Article 4, the following paragraph 1a is inserted: ‘1a. When projected collective redundancies of members of a crew, are carried out in connection with or deriving from a transfer of a seagoing vessel, Member States may, after consulting the social partners, grant the competent public authority the power to derogate, in full or in part, from the period provided for in paragraph 1 in the following circumstances: (a) the object of the transfer consists exclusively of one or more seagoing vessels, (b) the employer only operates one seagoing vessel.’	2. In Article 3(1), a new second subparagraph is inserted: ‘When the projected collective redundancy concerns members of the crew of a seagoing vessel, the notification shall be made to the competent authority of the State of the flag which the vessel flies.’ 3. In Article 4, the following paragraph 1a is inserted: ‘1a. When projected collective redundancies of members of a crew, are carried out in connection with or deriving <u>derive exclusively</u> from a transfer sale of a one or more seagoing vessels, Member States may, after consulting the social partners, grant the competent public authority the power to derogate, in full or in part, from the period provided for in paragraph 1, in the following circumstances: (a) the object of the transfer consists exclusively of one or more seagoing vessels, (b) the employer only operates one seagoing vessel.’

Reason

To establish whether a transfer of an undertaking or part of an undertaking has taken place within the meaning of the Transfer of Undertakings Directive, assessment of a given case must show the undertaking to have retained its identity after the transfer. Under EU case law, all the circumstances of the individual case should be taken into account when deciding whether an undertaking can be regarded as having retained its identity after a transfer (see in particular the Spijkers case). It is by no means guaranteed that the circumstances when a vessel is sold always involve a transfer within the meaning of the Transfer of Undertakings Directive.

The grounds invoked for derogating from the ‘cooling-off’ period under the Collective Redundancies Directive should apply regardless of whether a sale of one or more vessels constitutes a transfer within the meaning of the Transfer of Undertakings Directive. With the Commission’s proposed wording, it will be difficult to determine beforehand in a given case to what extent the derogation is admissible. The exclusion should therefore instead be explicitly linked to a collective redundancy concerning only the sale of one or more vessels, and the reference to the concept of transfer within the meaning of the Transfer of Undertakings Directive should be dropped.

Amendment 3

Article 5 (3)

Text proposed by the Commission	CoR amendment
The following paragraph 4 is added: ‘4. Member States may, after consulting the social partners, provide that Chapter II of this Directive does not apply in the following circumstances: (a) the object of the transfer consists exclusively of one or more seagoing vessels, (b) the undertaking or business to be transferred operates only one seagoing vessel.’	The following paragraph 4 is added: ‘4. Member States may, after consulting the social partners, provide that Chapter II of this Directive does not apply in the following circumstances: (a) the object of the transfer consists exclusively of one or more seagoing vessels, ; (b) the undertaking or business to be transferred operates only one seagoing vessel.’

Reason

It is quite reasonable to treat undertakings equally irrespective of whether they have one or more vessels.

Brussels, 3 April 2014

*The President
of the Committee of the Regions*
Ramón Luis VALCÁRCEL SISO
