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ANNEX

BACKGROUND PAPER No. 2

on

Employment, Social And Training Aspects Of Maritime And Fishing Industries And Related Sectors

Disclaimer:

The present document has been elaborated by European Commission services for the purpose of providing background material and information to supplement the Green Paper on Maritime Policy (COM ... 2006).

This background document is therefore purely illustrative and is not intended to represent the political views, nor to indicate or announce possible future initiatives of the European Commission.

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1. INTRODUCTION

This paper has been produced by Commission services as part of the preparations for a Green Paper on an EU Maritime Policy. It serves as background document to the Green Paper, with the aim to detail further some aspects raised in it, and to provide background information.

Maritime activities cover a broad variety of different sectors, starting from fishing to manufacturing transport equipment and further to logistics and transport to parts of financing, insurance and tourism. This document focuses on the employment aspects of more traditional parts of the maritime cluster such as fishing or shipping and port activities.

Figures of employment in the maritime cluster vary considerably, due to problems of registration and different definitions of the cluster. A reasonable estimation of the employment contribution of the following activities would be 1.5 Mio people¹. Taking into account the more indirect employment effects, the maritime cluster altogether accounts for more than 3 Mio working places all over Europe. To improve the Commission's understanding of the employment situation in the Maritime Cluster in the EU, DG FISH has commissioned a study on employment in sectors related to the sea or using marine resources. The results of this study will be available in the course of 2006 and will provide a more detailed inventory of employment in the maritime sector than what is currently available, including in this document. The study will also complement a study on employment in the fisheries which is currently being finalised.

The main subjects of the present document are:

- the adaptation and improvement of qualifications
- working conditions
- labour law and enforcement.
- the role of social dialogue.

In addition to the above, detailed information on labour legislation of specific relevance to the maritime sector (narrowly defined as above mentioned) is compiled in annex II, and the situation concerning the seafarers' ID document is covered in annex III.

¹ The Study "Economic Impact of Maritime Industries in Europe" Policy Research Corporation 2000 states that the Maritime Cluster counts for around 1,5 Mio direct employment in EU15 and for 2,4 Mio if one takes the more indirect effects into account. Work Group 1 reports that there are more than 3 Mio. jobs.

2. BETTER WORK THROUGH IMPROVEMENTS IN TRAINING

Competency of crews is indeed a very important part of the Commission's overall strategy to ensure that the EU fleet is not only competitive but also secure and safe. Maritime skills are crucial for safeguarding safety at sea, ensuring the protection of the marine environment, as well as for the maritime clusters.

Like in all maritime transport sectors, the Commission's approach as regards training is to transpose and enforce international rules into Community legislation. This is a way to ensure thorough application of international requirements within the Union and in addition to ensure rigid control of application within the individual Member States.

Hence the European Community adopted a very extensive legal framework, which transposes into Community legislation the international requirements of the STCW Convention², while provides for specific provisions to ensure quality of skills of third countries' seafarers and the recognition of certificates between the Member States.

In the context of employment in the maritime cluster, seafaring jobs deserve special attention. The increasing shortfall of merchant marine officers since the '80s and its impact for the European maritime clusters have been frequently addressed by the industry, the Member States and the European Institutions. Recently, the Council adopted specific conclusions in December 2005³, which emphasizes the dwindling maritime labour force in Europe and the importance of maritime expertise for the overall maritime clusters. The Council identifies also the actions that need to be taken by all involved actors to remedy the decline in the numbers of European seafarers and ensure the future supply of officers and adequate maritime know-how in Europe.

Recruitment, training and working conditions play equally important roles here, and activities undertaken both by individual actors, and at Community level are of crucial importance to safeguard a satisfactory level of employment in the seafaring business, which offers an interesting career for seafarers returning to shore after a fulfilling time at sea, and high quality personnel to those sectors of the cluster relying on experienced seafarers.

The following sections detail some Community actions in this area.

Initial training and facilitating the start of a career in the maritime sector

The Financial Instrument for Fisheries Guidance (FIFG)⁴ programme and other programmes on Member State level give grants to young fishers to purchase their first vessel.

Better integration of maritime qualifications into the non-maritime qualification schemes is needed. This would provide possibilities for migration between qualified

² Convention of the International Maritime Organisation on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

³ See Conclusions of the 2695th Council Meeting for Transport, Telecommunications and Energy held in Brussels, 1/5 December 2005.

⁴ <http://europa.eu.int/scadplus/leg/en/lvb/l60017.htm>

onshore and offshore activities and would ease the decision for training in a maritime profession.

Upgrading qualification

The European Social Fund (ESF)⁵ support, through the Community initiative EQUAL, various innovative trans-national projects (mainly in Spain, France, Italy and Portugal) dealing with training and diversification in the fisheries and aquaculture sectors.

Measures to help employees to adjust to changing labour-market requirements e.g. in the area of ship-building are also co-financed by the ESF.

Improved training on navigation and safety standards on the one hand but also concerning communication and management skills might facilitate to move between different parts of the sector (like fishing, different forms of freight shipping, touristic service provision and onshore support to shipping).

The proposal for a European Fisheries Fund (EFF), which will succeed the FIFG in the programming period 2007-2013, puts more emphasis on the development of human resources and on sustainable employment in the fisheries sector. Member States will correspondingly be required to submit their strategy in this respect before starting the programming process. Measures such as training and upgrading of professional skills will be available broadly in the EFF.

3. BETTER WORKING CONDITIONS

Improving working conditions in the maritime sector is important for attracting skilled workers and addressing current and future labour shortages in the entire maritime cluster.

This is particularly relevant for professions such as seafarers, fishermen and fisherwomen but also for specific jobs in ports, and offshore jobs such as exploitation of oil. The changing nature of jobs and technological innovation open up perspectives for the employment of women in male dominated sectors such as maritime transport or fishing. These changes can also provide opportunities for increasing mobility and career development within the maritime sector.

Working conditions are also affected by the standards of manning and the minimum requirements for qualifications within a crew, which are also dealt with in the working group on safety issues. Aspects relevant for manning are also part of the Directive 1999/63/EC on working time for seafarers⁶.

Dealing with working conditions should be seen also in the context of EU integration and the intensification of globalisation. EU integration, for example, is very relevant

⁵ http://europa.eu.int/comm/employment_social/esf2000/index_en.html

⁶ 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 Ship-owners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST), OJ L 167, 2.7.1999.

for initiatives and operations such as highways of the sea, inter modality, intra community transport on water and fishing in EU waters. The global level and the EU dimension are of crucial importance for oceangoing maritime transport requiring a strong interplay between both. Improving working conditions in globalised sectors such as the shipping business requires a strong interplay between the EU internal and external dimension. The strengthening of the EU's role in international bodies, in particular, UN and specialised agencies such as the ILO and in IMO has to be seen in this context.

Compared to the importance of maritime activities for the societies and economies the number of workers directly involved and their visibility is rather low. This means that national authorities do not necessarily have competence on maritime labour and its specific social security needs and in overall employment and social policy and legislation at the same time. This leads to certain shortcomings in the labour law situation for people employed in that sector.

Specific Problems of Labour Law in the Maritime Sector on EU and Member State level

The specific situation of the Maritime Sector has lead to certain shortcomings concerning the legal situation which are:

- Exclusion of maritime sector(s) in general labour and social legislation on a number of issues although on substance there is not necessarily a substantive ground for this exclusion. In the EU context a number of Directives such as on transfer of undertakings, insolvency or information and consultation of workers are either not applicable to these sectors, or are authorising EU Member states to introduce exclusions. In most cases these exclusions were introduced at the request of one or more Member states during the legislative procedure. (Please see annex for more detailed information).
- The lack of a specific approach in case of exclusion from general labour and social legislation. Initially no concrete initiatives were taken, thus leaving seafarers with no or insufficient protection. However the EU has adopted some specific Directives covering the maritime sector such as the Directive 1999/63/EC on working time and Directive 1999/95/EC concerning the enforcement of provisions in respect of seafarers' hours of work⁷.
- Situations where general labour law and social standards are not necessarily offering an appropriate response. For example the fact that many seafarers do not reside in the country of the flag state can result in serious complications in relation to coverage for long term social security branches if entitlements and payments are subject to conditions of residence. It can also result in complications towards the establishment of the reference framework for determining the cost of living and its impact on wages.

⁷

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

Exclusion of small ships from Directives on health and safety requirements without any specific coverage. In the EU context this is for instance relevant for fishing as the specific Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels⁸ is only applicable to new ships of 15 m and over and of 18 m and over for existing ships. The Directive 97/70/CE setting up a harmonised safety regime for fishing vessels⁹ is only applicable to larger vessels of 24 m or over. However most employment can be found on board small vessels. The Commission has initiated a reflection with EU Member states experts on the possible extension of the scope of the Directive 97/70/EC. The European Parliament has also requested in 2001 the extension of the scope of the 93/103/EC Directive.

The Green Paper could propose to reassess the reasons for the exclusions and draw the attention to items where a specific approach could be justified. Both should be organised in close cooperation with relevant stakeholders. For instance rules determining social security applicable to seafarers or rules relevant for the income of the seafarers are mainly determined by the flag state, regardless of the existence of a relation link between the flag state and the seafarer. This results in more and more redundancies in community maritime transport engaged in global shipping, especially after enlargement. Some ship-owners also consider flagging out. The crucial issue of the legal fiction constituted by the assimilation of a vessel to its flag state deserves attention. Better enforcement of labour standards in the maritime sector could also significantly contribute to the improvement of working conditions at all levels, and thus to a better capacity to attract skilled and motivated workers.

Specific Problems of supervision and inspection in the Maritime Sector

The weakening of the flag state supervision through the use of flags of convenience has affected the working conditions for many seafarers in maritime transport and may also lead to difficulties in determination of the national law applicable to individual employment contracts. The recent ILO maritime labour convention¹⁰ includes important provisions for organising supervision and compliance by both the flag state and the port state in relation to seafarers' employment and working conditions. This is relevant for EU policies.

As for the fishing sector, supervision of working conditions should be improved as the number of accidents is very high in that sector.

Labour inspection is a competence of national authorities. There is no general Directive or Regulation on labour inspection. Cooperation at EU level exists through the Senior Labour Inspectors Committee (SLIC). However for maritime transport three Directives are of importance:

⁸ Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

⁹ Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over

¹⁰ The consolidated Maritime Labour Convention, 2006 was adopted by the ILO on February, 23 in the 94th Maritime Session of the International Labour Conference, 2006.

- Amended EC Directive 94/57 of 22/11/1994 on common rules and standards for ship inspection and survey organisations (flag state responsibilities)¹¹;
- Amended EC Directive 95/21 of 19/6/1995 on port state control¹²
- EC Directive 1999/95 of 13/12/1999 concerning enforcement of seafarers' hours of work on board ships calling at EC ports¹³.

To strengthen the inspection of the maritime sectors a more integrated and multidisciplinary approach is required. This would avoid that inspection is in practice limited to technical issues not covering working conditions. A closer cooperation between technical and labour inspection and appropriate training could improve overall efficiency of enforcement and prevention.

EU Member states work could be supported by an EU multidisciplinary committee covering different types of inspections. This committee could also be a forum of discussion and debate. Cooperation with the EU Maritime Safety Agency, the European Foundation for the Improvement of Living and Working Conditions in Dublin and the European Agency for Safety and Health at Work in Bilbao could also be important.

International labour standards: essential in the Maritime Sector

International labour standards are important for many maritime activities and in particular for those strongly integrated in the global economy such as international maritime transport and parts of the seagoing fishing sector. Specific international labour standards are also addressing relevant parts of the maritime cluster such as the ILO standards on work in ports and in hotels.

The activities of IMO are also relevant for working life in the maritime sector in relation to safety including manning and training requirements.

Maritime transport

About one third of all ILO standards are addressing maritime transport issues. However the level of ratification and effective application is very uneven. In addition flags of convenience have eroded the effective application. Therefore the ILO adopted in February 2006 a Convention consolidating almost all its maritime transport conventions in one so-called super convention . This Convention will lay the foundations for a level playing field at international level. EC has been closely involved in the preparation and adoption process, including through an intensive EU coordination before and during the maritime labour session of the International

¹¹ Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations

¹² 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)

¹³ 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

Labour Conference in February 2006. The Commission also informed and consulted European social partners in the maritime sector in relation on the ILO negotiation. The Commission will contribute to the promotion of the speedy ratification by EU member states and by third countries. The Commission will also contribute to the implementation of the ILO Convention including by consultations of social partners under art. 138 of the EC Treaty that can result in European framework agreements and in EC legislation.

Seafarer identification document

In order to facilitate shore leave and transits of seafarers – crucial issue for their well being and employment opportunities – seafarers are entitled to a seafarer identity document on the basis of ILO convention n°108. The seafarer identification document (SID) is not a travel document but a social document providing shore leave in ports and facilitating transits such as to the place of residence and to other ships. After the 11/9 terrorist attacks in the US, it was generally considered that the security of identification documents should be improved, and therefore the ILO convention n°185 was adopted in 2003, which inter alia introduced a biometric element in the SID through a barcode (a barcode was preferred to a chip as the former can contain less information, and is therefore more protective for the privacy of the seafarer). The SID is not only relevant for EU seafarers but also seafarers of third countries working on vessels under a flag of an EU Member state and for seafarers of third countries arriving in EU ports or in transit. The SID has therefore an external dimension.

A 2005 Council Decision (2005/367/EC) has authorised EU Member States to ratify the Convention n°185, without establishing an obligation or a deadline.

Due to the fact that biometric elements on travel documents are included through chip technology, the ratification process by most of the EU Member states has slowed down (amongst Member States, only France and Hungary have ratified the Convention so far). In addition EU Member States could apply different policies towards the SID complicating an EU wide approach.¹⁴ The EC Regulation No 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) includes the possibility to exempt seafarers from border checks for shore leave insofar they have a SID.

¹⁴

In accordance with Regulation 539/2001, listing the third countries whose nationals must be in possession of visa when crossing the external borders and those whose nationals are exempt from that requirement, Member States can exempt from the visa obligation certain categories of persons amongst whom the seafarers. According to the information communicated to the Commission, all Member States but two exempt seafarers from the visa obligation for the shore leave and all Member States but two require the visa for the transit (Commission Communication JO C68, de 21.3.2003). For the cases where a visa is needed, seafarers can, under certain conditions, obtain a visa at the border (in the port) in conformity with Regulation 415/2003. In addition, the Schengen Borders Code (whose formal adoption by the European Parliament and the Council is expected for the beginning of December) lays down that Member States may authorise seamen holding a seafarer's identity document issued in accordance with the ILO Convention No. 185, the FAL Convention and the relevant national law, to go ashore in the area of the port or in the adjacent municipalities without presenting themselves at a border crossing-point, on condition that they appear on the crew list.

The Green Paper could invite EU Member states to ratify, invite a regular discussion between Commission and EU Member states on the state of ratification, on application problems and on the IT platforms used for reading the ID and on technical assistance by the EC and EU Member states towards third countries (labour supply countries) and ILO.

Fishing

The ILO is also preparing a consolidation and revision of its conventions on work in the fishing sector. However the adoption scheduled for June 2005 very narrowly failed. The ILO aims at an adoption of a consolidated Convention in June 2007. The EC is also promoting decent work by introducing the respect for core labour standards in its fisheries agreements with third countries (social clause).

4. CONTINUING SOCIAL DIALOGUE

The European social dialogue, recognised in the Treaties, is a key feature of the European social model contributing to partnership, consensual developments and better governance. A constructive dialogue between employers and workers at all levels is an important element for a successful functioning of the labour market as it promotes confidence and cooperation and strengthens the capacity to anticipate and manage change. The social partners also contribute to a better balance between economic and social concerns, and in promoting quality at work. In addition, social dialogue strengthens the links between the European and national levels, and contributes to a better knowledge of the *acquis*. This is particularly important with regard to the new Member States.

In this context, the sectoral social dialogue merits a specific mention as the sectoral level is close to workplace realities and often the most appropriate level for the discussion of many labour market issues.

The social partners have the capacity to conclude agreements to be implemented by Council Directives or in accordance with the procedures and practices specific to management and labour and the Member States. In addition, they contribute to the development and promotion of better working conditions through the adoption of joint texts and the undertaking of transnational joint initiatives.

With regard to maritime policies, the activities of several Sectoral Social Dialogue committees should be highlighted. Among the 31 formally created committees, those on maritime transport, sea fishing, ship-building and, to some extent, horeca/tourism are directly relevant in the framework of the discussions on a holistic maritime policy.

For instance social partners of the maritime transport sector concluded in 1998 an agreement on the organisation of working time for seafarers, implemented through Council Directive 1999/63/EC¹⁵. More recent activities of the sectoral social

¹⁵ 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 Ship-owners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST), OJ L 167, 2.7.1999.

dialogue committees related to the maritime sphere include initiatives to promote vocational training and geographical and vocational mobility, to encourage the insertion of young people on the labour market and to improve the image of the sectors. In addition, health and safety issues have traditionally a prominent position in the joint work programmes of the committees, including issues related to a sustainable environment.

The development of intra EU maritime initiatives such as highways of the sea, cabotage, intermodality, etc. and issues linked to globalisation require a pro-active approach of social partners. The Green Paper should encourage the social partners to:

- strengthen the use of social dialogue including through European agreements.
- work together in areas related to employment and working conditions affecting the broader maritime cluster.

Synergies and areas of co-operation should be sought, and initiatives developed in a way which ensures transferability, comparability and mobility between related sectors.

On Employment Legislation applicable to seafarers

EC labour and social secondary legislation from the perspective of its applicability to seafarers

The chapter below lists labour and social instruments of EC secondary legislation applicable to workers performing their activity on seagoing vessels, excluding off-shore facilities or workers on mineral-extractive industries through drilling platforms¹⁶.

It should be noted that general EC legislation in the field of labour and social law provides in some cases for general or particular exclusions concerning seafarers. In other cases the Member States are authorized to introduce or to maintain the pre-existent exclusions in their national legislations.

It should also be stated that there are EC instruments applicable specifically to seafarers.

The information which follows is further subdivided in 6 chapters:

- (1) Equality of treatment and non-discrimination,
- (2) Labour law.
- (3) Free movement of workers and coordination of Social security schemes
- (4) Protection of health and safety of workers in the maritime sectors by general OHS (Occupational Health and Safety) legislation
- (5) Protection of health and safety of workers (OHS) in the fishing sector by specific OHS legislation and by provisions related to the construction of fishing vessels
- (6) Remarks on enforcement and inspection

Within the chapters, for easier reference, the instruments are mostly grouped in chronological order. Comments are included in grey-shaded charts.

1. Equal treatment and non-discrimination

¹⁶ The construction of vessels standards, technical standards and training/manning requirements can be of great importance for OHS (occupational health and safety). These include for instance Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonized requirements and procedures for the safe loading and unloading of bulk carriers; Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers; Directive 1996/29/Euratom of the Council of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation; Directive 1990/641/Euratom of the Council of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas; Directive 1996/82/EC of the Council of 9 December 1996 on the control of major-accident hazards involving dangerous substances. These instruments are not analysed in the present document. Council directive 92/91/EEC (OJ L N° 348 of 28.11.1992) is applicable for improving the safety and health protection of workers in the mineral-extractive industries through drilling.

a) Equality between men and women

Council Directive 75/117/EEC of the Council of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Directive 76/207/EEC of the Council of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Directive 1979/7/EEC of the Council of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

Directive 1986/613/EEC of the Council of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood

Directive 1986/378/EEC of the Council of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes

Directive 1992/85/EEC of the Council of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

Directive 1996/34/EC of the Council of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

Council Directive 1996/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes

Council Directive 1997/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (simply extending the Directive to the UK)

Directive 1997/80/EC of the Council of 15 December 1997 on the burden of proof in cases of discrimination based on sex

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (unrelated to labour law)

b) Equality of treatment on grounds different than gender (EMPL D/3)

Directive 2000/43/EC of the Council of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation)

2. Labour law

Instruments applicable to seafarers, including seafarers in their general scope of application

Directive 1991/383/EEC of the Council of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship.

Council directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship

Directive 1997/81/EC of the Council of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC; together with **Council Directive 98/23/EC** of 7 April 1998 on the extension of Directive 97/81/EC on the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland.

Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP

Directive 2001/86/EC of the Council of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees

There is no exclusion of seafarers in the provisions of this Directive dealing with employee information, consultation and participation.

There seems to be no need of such exclusion, taking into account that the European company is optional and that the mechanisms of involvement are negotiated.

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Co-operative Society with regard to the involvement of employees

There is no exclusion of seafarers in the provisions of this Directive dealing with employee information, consultation and participation, which has to be transposed before 18 August 2006.

There seems to be no need of such exclusion, taking into account that the European Cooperative society is optional and that the mechanisms of involvement are negotiated. The issue has not been dealt with in the meetings of the group of experts preparing the transposition of this directive.

1980 Rome Convention on the law applicable to contractual obligations (consolidated version) (Official Journal C 027 , 26/01/1998 P. 0034 – 0046)

In any situation involving a choice between the laws of different countries the Convention on the Law applicable to Contractual Obligations of 19 June 1980 (the "Rome Convention") applies regarding individual employment contracts.

Art. 6 of the Rome Convention determines the law applicable to individual employment contracts.

The Rome Convention is in force in the 15 "old" Member States. However it should be stressed that it takes the form of an international agreement rather than a Community instrument proper and as a consequence, it does not automatically apply to the 10 Member States which joined the Union in 2004 being subject to the process of ratification in each one of them.

Instruments applicable to seafarers, containing special differentiated provisions for them

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 (see Arts 9.2 and 10.4). In the 2004 Report on the Directive the Commission concluded that it saw no immediate need to revise the Directive (COM(2004) 105).

Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)

This Directive essentially implements Convention 180 from the ILO. It is also relevant for manning.

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.

This Directive extends the provisions of Directive 99/63/EC to ships calling at Community ports irrespective of the place of registration.

Instruments not applicable to seafarers or allowing the Member States to exclude their application to seafarers.

Instrument	Text of provision	Comments
<u>Council Directive 94/45/EC</u> of 22 September 1994 on the establishment of a European Works Council	Art. 1.5 Member States may provide that this directive shall	<i>Working paper 15 of the working party on "information and consultation", preparing the transposition of the 94/45/EC directive states that "One reason for the authorisation to exclude</i>

<p>or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.</p> <p>Extended to United Kingdom of Great Britain and Northern Ireland by <u>Council Directive 97/74/EC</u></p>	<p>not apply to merchant navy crews</p>	<p><i>merchant navy crews is that in general these crews works at a great distance from one another and from the management, and this is very difficult to bring them together for consultation. Bearing this in mind it would seem adequate not to exclude crews of ferry boats covering only smaller distances"</i></p> <p><i>In most Member states, the scope of the transposition text implicitly or explicitly includes the merchant navy, whereas some countries (EL, I, HU, LV, CY) exclude this sector. In Denmark and the Netherlands, persons working in the merchant navy are not excluded from the scope of the transposition text, but they may not be elected or appointed as members of the special negotiating group or European works council.</i></p> <p><i>The option to exclude merchant navy crews may be reviewed in the future, given the fact that the information and consultation mechanisms are negotiated in order to adapt to the characteristics of the situation in the company.</i></p>
<p><u>Directive 96/71/EC</u> 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</p>	<p>Art 1.2</p> <p>This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.</p>	<p><i>In the "Commission's services report on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services" {COM(2006) 159 final} the following is stated:</i></p> <p><i>"Directive 96/71/EC does not apply to merchant navy undertakings as regards seagoing personnel.</i></p> <p><i>This exclusion is considered justified by the vast majority of Member States³⁵, given the specific nature of the itinerant work done by this group of workers and the practical difficulties associated with monitoring them. The legislation in the Netherlands and the Czech Republic transposing the Directive does not make explicit provision for derogations with regard to the merchant navy.</i></p>

		<p><i>International rail, road or air transport is not excluded as such from the scope of the Directive. However, in a statement included in the minutes of a Council meeting, the Council and the Commission pointed out that Article 1(3)(a) of the Directive presupposes</i></p> <ul style="list-style-type: none"> <i>- the transnational provision of services by an undertaking on its own account and under its direction, under a contract concluded between the undertaking providing the services and the party for whom the services are intended and</i> <i>- posting as a part of such provision of services.</i> <p><i>Accordingly, where the aforementioned conditions are not met, workers who are normally employed in the territory of two or more Member States and who form part of the mobile staff of an undertaking engaged in operating professionally on its own account international passenger or goods transport services by rail, road, air or water do not fall within the scope of Article 1(3)(a).</i></p> <p><i>This situation is justified by the fact that it would be difficult to manage the practical consequences of applying different national laws to the existing relationship between the international transport undertaking (operating on its own account or on behalf for hire or reward) and its mobile staff, depending on the country to which the passengers/goods were being transported.</i></p> <p><i>On the other hand, "cabotage transport operations", in which the various parts of the journey take place within the borders of the same Member State, fall within the scope of Article 1(3)(a) of the Directive."</i></p>
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<p>Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies</p>	<p>Art 1.2 c</p> <p>2. This Directive shall not apply to:</p> <p>(c) the crews of seagoing vessels</p>	<p><i>In the proposal for an amendment of the original 75/129/EEC in 1992, the Commission proposed that: ... "This Directive shall not apply to : ... c) the crews of sea-going vessels inasmuch as the special regime covering them provides equivalent to that resulting from this Directive". This amendment however did not go through of the Council, so the exemption stayed unchanged. However already in the 1992's proposal the Commission wanted to enlarge the personal scope of the EU legislation, so there is a need for further discussion on this issue.</i></p>
<p>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</p>	<p>Art 1.3</p> <p>This Directive shall not apply to sea-going vessels</p>	<p><i>No reasons are stated for this exclusion which was only introduced by the Council. It is difficult to determine why seagoing vessels should be excluded from the Directive. Failing a convincing justification, the exception should be suppressed.</i></p>
<p>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.</p>	<p>Art. 3.3</p> <p>Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas.</p>	<p><i>The recitals of the Directive do not give any reason for the provision, but notes of the discussions in COREPER show that the exclusion was proposed by some Member States with reference to the exceptions in the Works Council, collective dismissals and transfer of undertakings directives, as justification.</i></p>
<p>Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member</p>	<p>Art 1.</p> <p>Where such provision already applies in their national legislation, Member States</p>	<p><i>Where the national legislation provides the possibility of excluding from the scope of the Directive "share-fishermen", such exclusion can be maintained based on art. 1.3 of the amended Directive.</i></p> <p><i>The need of this exemption however can</i></p>

States relating to the protection of employees in the event of the insolvency of their employer	may continue to exclude from the scope of this directive: [...] (b) share-fishermen.	<i>be re-examined.</i>
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.	<p>Art. 1.3</p> <p>This Directive shall not apply to seafarers, as defined in Directive 1999/63/EC without prejudice to Article 2(8) of this Directive.</p> <p>Art. 21</p> <p>Articles 3 to 6 and 8 shall not apply to any worker on board a seagoing fishing vessel flying the flag of a Member State.</p>	<i>Directive 1999/63/EC is lex specialis.</i>

3. Free movement of workers and coordination of Social security schemes

Treaty legal base

- **Article 39 EC**

Note: Insofar as the EC law on free movement of workers is concerned (Art. 39 EC and secondary legislation) the European Court of Justice has repeatedly confirmed that there is no exception for the maritime transport sector, which means that seafarers and employers in this industry are subject to the EC legislation in question.

- **Article 42 EC**

Secondary Legislation

Note: The instruments below deal with all EU citizens who have the status of workers (as well as their family members regardless of their nationality). There are no special provisions for seafarers in this legislation, but the ECJ has confirmed that seafarers and employers in this industry are subject to the EC legislation in question.

List of Instruments of general application to all workers, including seafarers

Directive 64/221/EEC of 25.02.1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ No 56, 4.04.1964)

Regulation 1612/68 of 15.10.1968 on freedom of movement for workers within the Community (OJ No L 257, 19.10.1968)

Directive 68/360/EEC of 15.10.1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ No L 257, 19.10.1968)

Regulation (EEC) 1251/70 of 29.06.1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ No L 142, 30.6.1970)

Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers (*OJ L 199 06.08.1977 p. 32*)

Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ No L 209, 25.07.1998)

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (*OJ L 158 30.04.2004 p. 77*)

Instruments of general application to all workers, and containing special provisions for seafarers

Regulation 1408/71 to be replaced by **Regulation 883/2004** of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Council Regulation (EEC) 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self employed persons, to self-employed persons and to their families moving within the Community

Council Regulation (EC) 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality

Note: Insofar as coordination of social security systems is concerned (Art. 42 EC and secondary legislation), seafarers are not excluded from the rules on coordination of social security systems but there are specific rules for seafarers that take account of the specificity of their situation (conflict of law rules)

(See Art. 14 b of Reg. 1408/71 to be replaced by Art. 11 (4) of the new Regulation: 883/2004). The basic criteria is the application of the flag state legislation in relation to social security.

- Accession Treaties of 2003 & 2005

Note: The Accession Treaty of 2003 between the EU-15 and the Member States that joined the EU on 1 May 2004 contain transitional arrangements for the free movement of workers across the EU-25. As a result the introduction of the full *acquis communautaire* may be delayed for a transitional period of maximum 7 years. During the transitional period, restrictions may be applied to access to the labour market by workers from the Member States concerned. There is no exception to the principle of equal treatment however, once a worker has obtained access to the labour market of the Member State concerned. There is no transitional period for the applicable social security legislation (Regulation 1408/71 replaced by Regulation 883/2004). The Accession Treaty of 2005 between the EU-25 and Bulgaria and Romania contains similar transitional provisions potentially affecting workers from the 27 contracting parties. All these transitional arrangements apply to seafarers from the relevant countries as well.

Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003)

Official Journal L 236 of 23 September 2003, Appendices to Annexes IV, V, VII, VIII, IX, X, XI, XII, XIII and XIV of the Act concerning the conditions of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia Official Journal C 227 E of 23 September 2003

Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union (2005)

Official Journal L 157 of 21 June 2005

Association, Cooperation and Partnership Agreements

Note: EU Member States are bound by a great number of bilateral and multilateral association agreements which bind the Community and its Member States to an increasing number of third countries, on the basis of Art. 310 EC. Some of these agreements are extremely important for the maritime transport sector, in particular as there are a great number of seafarers of these third countries which are employed on EU-flagged ships and may be entitled to invoke the provisions of these agreements.

All the agreements listed below contain provisions on (free) movement of workers, but the contents and the effect of these provisions may vary considerably, and must be assessed on a treaty-by-treaty basis. For example, workers who benefit from the EEA agreement and the EU-Switzerland will not only obtain rights in the host EU country, but will also be allowed to benefit from intra-EU mobility, as these treaties grant the beneficiaries the right to obtain access to the labour market of any EU Member State (albeit, in the case of Switzerland, this is for the moment subject to the transitional provisions). The other agreements discussed below

differ from the EEA agreement and the EU-Switzerland agreement on this point: none of these agreements grant the beneficiaries the right to move from one EU country to another to pursue employment.

Some of these agreements contain provisions on coordination of social security systems between the contracting parties, but each agreement has to be assessed on its own merits in this regard.

EEA

The Agreement establishing the European Economic Area, EC- Norway, Iceland and Liechtenstein, 1992, O.J., 1994, L 1/1.

***Note:** This agreement extends to nationals of Norway, Iceland and Liechtenstein and their family members the benefit of all the rules of Community law governing free movement of persons. It gives workers of the contracting parties a status which is identical to that of EU citizens. The agreement has been extended to include the 10 new Member States that joined the EU on 1 May 2004, but this extension also includes transitional provisions for the workers from the 10 new EU Member States.*

Switzerland

Agreement between the European Community and its Member States and Switzerland, on the free movement of persons, signed on 21 June 1999 and in force since 1 June 2002 (O.J. L 114/45)

***Note:** The EU-Switzerland bilateral agreement gives workers of the contracting parties a status which was similar to the status which EU workers had in 1999, and has recently been extended to the 10 Member States that joined the EU on 1 May 2004. However, workers of the contracting parties to the EU-Switzerland bilateral agreement are currently subject to transitional arrangements. In September 2005 the Swiss population accepted by referendum to extend this agreement to workers from the 10 new Member States that joined the EU on 1 May 2004. The bilateral agreement between the EU and Switzerland also contains detailed provisions for the coordination of social security systems between the parties concerned.*

San Marino

Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, signed on 16 December 1991, in force since 1 April 2002

***Note:** This bilateral agreement grants nationals of the contracting parties equal treatment rights in matters relating to employment.*

Turkey

The Association Agreement with Turkey (Ankara Agreement), 12 September 1963 (O.J. 1964, P 217/3687); **Protocol to the Ankara Agreement,** 23 November 1970 (O.J. 1973,

C113/18); **Council Decision N0 1/80 of the Association Council of 19 September 1980 on the development of the Association**

***Note:** The EU-Turkey Association Agreement of 1963, its 1970 Protocol and subsidiary legislation are of great importance to Turkish workers and their families. The body of legislation applicable to Turkish workers and their families in the EU gives these persons a status under Community law which can best be described as somewhere halfway between that of third-country nationals and Union citizens. The workers concerned, once they have been admitted to the EU Member State, are guaranteed the following rights: (a) national treatment as regards working conditions and remuneration; (b) no right of entry to the EU, but a right to extension of work and residence permits in the host Member State after one year of lawful employment; (c) after four years of employment free access to all employment and a residence right in that host State while looking for other employment; (d) access to employment and education for the second generation in the host State; (e) a standstill-clause with direct effect and a general non-discrimination clause. There is long-standing case law of the ECJ according to which the relevant provisions of the Association agreement and Council Decisions No 1/80 have direct effect. The EC-Turkey Association Agreement also includes some provisions regarding social security entitlements.*

Europe Agreements

Romania

The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, signed on 1 February 1993 and in force since 1 February 1995

***Note:** This Europe agreement grants workers of the contracting parties equal treatment once they have obtained access to the labour market of the Member State concerned. This agreement is to be replaced by the Accession Treaty 2005 (and its transitional Provisions) once Romania joins the EU. The ECJ has decided that the provisions on equal treatment of the Europe Agreements have direct effect.*

Bulgaria

Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, signed on 9 March 1993, in force since 1 February 1995

***Note:** This Europe agreement grants workers of the contracting parties equal treatment once they have obtained access to the labour market of the Member State concerned. This agreement is to be replaced by the Accession Treaty 2005 (and its transitional Provisions) once Bulgaria joins the EU. The ECJ has decided that the provisions on equal treatment of the Europe Agreements have direct effect.*

ACP Agreement

The Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed at Cotonou, in force since 2003, (OJ 2003 L 83), as amended in 2005 (L 209 (11/08/2005))

Note: This agreement had been revised in 2005, applies to 77 ACP countries, whose legally employed workers are guaranteed treatment free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal. It should be noted that the language of the equal treatment provision of the ACP agreement is similar to the language used in the Europe Agreements (and which has direct effect according to the ECJ).

Euro-Med Agreements

Note: Association Agreements are currently in force between the EU and a number of Euro-Med countries, some of which replace earlier Cooperation Agreements dating from the 1970s. A number of these Euro-Med Association Agreements contain provisions granting rights to migrant workers that go beyond promises of cooperation between contracting parties. As for the treatment of workers, the contents of these Euro-Med agreements may vary: Moroccan, Tunisian, Algerian workers are entitled to equal treatment, but Egyptian workers only to 'fair treatment'. The agreement with Israel contains provision on equal treatment regarding access to social security benefits, but no express right to equal treatment as regards working conditions. There is long-standing case law of the ECJ in relation to the earlier cooperation agreements with Morocco, Tunisia and Algeria according to which the equal treatment provisions of the agreement concerned had direct effect. Some of these agreements also contain provisions regarding social security entitlements, but each agreement needs to be scrutinised separately in this regard.

Euro-Med Agreements that grant rights to migrant workers are as follows:

Algeria

Euro-Mediterranean Association Agreement with Algeria, signed on 22 April 2002, in process of ratification

Morocco

Euro-Mediterranean Association Agreement with Morocco, signed on 26 February 1996, in force since 1 March 2000

Tunisia

Euro-Mediterranean Association Agreement with Tunisia, signed on 17 July 1995, in force since 1 March 1998

Egypt

Euro-Mediterranean Association Agreement with Egypt, signed on 25 June 2001, in force since 1 June 2004

Israel

Euro-Mediterranean Association Agreement with Israel, signed on 20 November 1995, in force since 1 June 2000

Western Balkans and Stabilisation and Association Agreements

Note: *The EU has concluded or is in the process of preparing a number of Stabilisation and Association Agreements (SAA) with countries from the Western Balkans. All of these contain provisions on the movement of workers similar to the provisions of the Europe Agreements (of which the ECJ has already stated that they have direct effect. Some of these SAAs also contain provisions regarding social security entitlements, but each agreement needs to be scrutinised separately in this regard.*

Croatia

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, signed on 29 October 2001, in force since 1 February 2005

FYROM

Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, signed on 9 April 2001, in force since 1 April 2004

Albania

SAA is being prepared and should be concluded shortly

Serbia and Montenegro

SAA is being planned

Bosnia and Herzegovina

SAA is being planned

Eastern Europe and Central Asia

Note: *The EU has concluded a number of agreements with countries from Eastern Europe and Central Asia. Some of these contain provision granting workers (sometimes qualified) rights to equal treatment and contain provisions regarding social security coordination. Each*

of these treaties needs to be examined on its merits to determine to what extent it bestows directly enforceable rights on individuals. The language in the treaties varies. The ECJ has ruled that the provision on equal treatment of workers in the EU-Russia Partnership agreement has direct effect. The language of the partnership agreements with Ukraine and Moldova, and the other countries mentioned below is similar but not identical to that of the EU-Russia Partnership insofar as they include an obligation for contracting parties to 'endeavour' to ensure equal treatment. As the language of the latter agreements is more qualified, it is therefore uncertain to what extent individuals can invoke the provision although of course the contracting parties are bound the text of the agreement. Further, some of these SAAs also contain provisions regarding social security entitlements, but each agreement needs to be scrutinised separately in this regard.

Russia

Agreement on Partnership and Cooperation between the European Communities and their Member States of the one part, and the Russian Federation, of the other part signed on 24 June 1994, in force since 1 December 1997

Ukraine

Agreement on Partnership and Cooperation between the European Communities and their Member States of the one part, and the Russian Federation, of the other part signed on 14 June 1994, in force since 1 March 1998

Moldova

Partnership and Cooperation Agreement between the European Union and Moldova, of 28 November 1994, in force since 1 July 1998

Armenia

Partnership and Cooperation Agreement between the European Union and Armenia, in force since 1 July 1999

Azerbaijan

Partnership and Cooperation Agreement between the European Union and Azerbaijan, in force since 1 July 1999

Belarus

Partnership and Cooperation Agreement between the European Union and Belarus, signed in March 1995 but not yet in force

Georgia

Partnership and Cooperation Agreement between the European Union and Georgia, in force since 1 July 1999

Kazakhstan

Partnership and Cooperation Agreement between the European Union and Kazakhstan, in force since 1 July 1999

Kyrgyzstan

Partnership and Cooperation Agreement between the European Union and Kyrgyzstan, in force since 1 July 1999

Uzbekistan

Partnership and Cooperation Agreement between the European Union and Uzbekistan, in force since 1 July 1999

4. Protection of health and safety of workers in the maritime sectors by general OHS (Occupational Health and Safety) legislation

Treaty legal base

- Article 137 EC (Ex-118A)

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:

(a) Improvement in particular of the working environment to protect workers' health and safety.

(...)

2. To this end, the Council:

(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this article, where the Council shall

act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this article.

(...)

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 amended by **Council Directive 91/382/EEC** of 25 June 1991 amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work, and by the **European Parliament and the Council Directive 2003/18/EC** of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work.

Ces Directives sont d'application au secteur maritime.

Directive 89/391/EC of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Cette Directive est d'application au secteur maritime.

Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

Cette Directive ne s'applique pas: a) aux moyens de transport utilisés en dehors de l'entreprise et/ou de l'établissement, ainsi qu'aux lieux de travail à l'intérieur des moyens de transport; d) aux bateaux de pêche [Article 1, paragraphe 2].

Directive 89/655/EEC of the Council of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work, as amended by **Directive 95/63/EC of the Council** of 5 December 1995 amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) and by **Directive 2001/45/EC of the European Parliament and of the Council** of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Ces Directives sont d'application au secteur maritime.

Directive 89/656/EEC of the Council of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace.

Cette Directive est d'application au secteur maritime.

Directive 90/269/EEC of the Council of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers.

Cette Directive est d'application au secteur maritime.

Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment.

Cette Directive n'est pas d'application aux systèmes informatiques à bord d'un moyen de transport, [Article 1, paragraphe 3 (c)].

Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work.

Cette Directive n'est pas d'application au secteur maritime.

Directive 92/29/EEC of the Council of 31 March 1992 on the minimum safety and health for improved medical treatment on board vessels.

Cette Directive est d'application au secteur maritime.

Directive 92/58/EEC of the Council of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work.

Cette directive est d'application au secteur maritime.

Toutefois elle ne s'applique pas à la signalisation utilisée pour la réglementation du trafic fluvial et maritime [Article 1, paragraphe 3].

Council Directive 92/85/EC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

Cette Directive est d'application au secteur maritime.

Directive 98/24/EC of the Council of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work.

Cette Directive est d'application au secteur maritime.

Néanmoins, l'article 1, §5 de la Directive 98/24/CE indique que "en ce qui concerne le transport d'agents chimiques dangereux, les dispositions de la directive s'appliquent sans préjudice de dispositions plus contraignantes et/ou spécifiques contenues dans la directive 94/55/CE, dans la directive 96/49/CE, dans les dispositions du code IMDG, du code IBC, et

du code IGC tels que définis à l'article 2 de la directive 93/75/CE, dans les dispositions de l'accord européen relatif au transport international de marchandises dangereuses par voie navigable intérieure et du règlement concernant le transport de substances dangereuses sur le Rhin tels qu'incorporés dans le droit communautaire et dans les instructions techniques pour la sécurité du transport des marchandises dangereuses publiées, à la date d'entrée en vigueur de la présente directive, par l'Organisation de l'aviation civile internationale".

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 (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Cette Directive n'est pas d'application à l'utilisation de moyens de transport par terre, mer, voies navigables et air auxquels s'appliquent les dispositions pertinentes des accords internationaux (par exemple ADNR, ADR, OACI, OMI, RID) et les directives communautaires qui donnent effet à ces accords. Les moyens de transport destinés à être utilisés dans une atmosphère potentiellement explosive ne sont pas exclus. Néanmoins, les dispositions de la directive 89/391/CEE et des autres directives pertinentes s'appliquent pleinement au domaine visé au paragraphe 1, sans préjudice de dispositions plus restrictives et/ou spécifiques contenues dans la présente directive [Article 1, paragraphe 2,e) et paragraphe 3].

Directive 2000/39/EC of the Commission of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work.

Cette Directive est d'application au secteur maritime.

Néanmoins, l'article 1, §5 de la Directive 98/24/CE indique que "en ce qui concerne le transport d'agents chimiques dangereux, les dispositions de la directive s'appliquent sans préjudice de dispositions plus contraignantes et/ou spécifiques contenues dans la directive 94/55/CE, dans la directive 96/49/CE, dans les dispositions du code IMDG, du code IBC, et du code IGC tels que définis à l'article 2 de la directive 93/75/CE, dans les dispositions de l'accord européen relatif au transport international de marchandises dangereuses par voie navigable intérieure et du règlement concernant le transport de substances dangereuses sur le Rhin tels qu'incorporés dans le droit communautaire et dans les instructions techniques pour la sécurité du transport des marchandises dangereuses publiées, à la date d'entrée en vigueur de la présente directive, par l'Organisation de l'aviation civile internationale".

Directive 2000/54/CE du Parlement européen et du Conseil du 18 septembre 2000 concernant la protection des travailleurs contre les risques liés à l'exposition à des agents biologiques au travail (septième directive particulière au sens de l'article 16, paragraphe 1, de la directive 89/391/CEE).

Cette Directive est d'application au secteur maritime.

Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration)

Cette Directive est d'application au secteur maritime.

Néanmoins, dans le respect des principes généraux de la protection de la sécurité et de la santé des travailleurs, les Etats membres peuvent, pour le secteur de la navigation maritime, dans des circonstances dûment justifiées, déroger à l'article 5, paragraphe 3, en ce qui concerne les vibrations transmises à l'ensemble du corps, lorsque, compte tenu de l'état de la technique et des caractéristiques spécifiques des lieux de travail, il n'est pas possible de respecter la valeur limite d'exposition malgré la mise en œuvre de mesures techniques et/ou organisationnelles [Article 10, paragraphe 1].

Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise)

Cette Directive est d'application au secteur maritime.

La directive devrait être transposée dans le droit national des Etats membres au plus tard le 15 février 2006. Cette directive donne toutefois la possibilité aux Etats membres de disposer d'une période transitoire de 5 ans à compter du 15 février 2006 pour appliquer les dispositions de l'article 7 au personnel embarqué sur les navires de mer [Article 17, paragraphe 2].

Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work).

Cette Directive est d'application au secteur maritime.

Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

Cette Directive est d'application au secteur maritime.

Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC.

Cette Directive est d'application au secteur maritime.

Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation).

Cette Directive est d'application au secteur maritime.

5. Protection of health and safety of workers (OHS) in the fishing sector by specific OHS legislation and by provisions related to the construction of fishing vessels

- **Directive 93/103/EC**, concerning minimum safety and health requirements for work on board fishing vessels, setting up minimum requirements applicable to work on board of new and existing vessels with a length between 15 – 18 meters or over.

Therefore small vessels are not covered by this Directive. The European Parliament requested in 2001 the Commission to extend the scope of Directive 93/103/EC to include smaller vessels. However, it should be stressed that above mentioned directives are also applicable to the small fishing vessels with the exception of Directive 89/654/EEC.

- Directive 97/70/CE, setting up a harmonised scheme for the safety of vessels with a length of 24 m or over.

The Commission has initiated a reflection on the extension of the Directive to smaller vessels.

These Directives are based on the EC transposition of international standards such as:

- The 1993 Protocol to the Torremolinos derived from the International Convention on the Safety of Fishing Vessels, only addresses fishing vessels of 24 m in length and over, it is not yet ratified by all States but transposed in Community law.
- The FAO Intergovernmental Maritime Consultative Organisation (IMCO) drew up a code of safety for fishermen and fishing vessels in two parts: part A for skippers and crews which is not designed for small-scale fishing boats, and part B for vessels construction and equipment which explicitly refers to vessels longer than 24 m.
- The 1998 FAO/ILO/IMO “voluntary guidelines for the design, construction and equipment of fishing vessels” is not applicable to small-scale boats.
- Only chapter 5 of the international Convention for the Safety of Life at Sea (SOLAS) makes specific reference to all small and medium-sized, requiring that “ships of less than 150 ton gross” be fitted with a “steering compass”.

6. Remarks on enforcement and inspection

Labour inspection is a competence of national authorities. There is no general Directive or Regulation on labour inspection. Cooperation at EU level exists through the senior labour inspectors committee (SLIC).

However for maritime transport three Directives are of importance:

- Amended EC Directive 94/57 of 22/11/1994 on common rules and standards for ship inspection and survey organisations (flag state responsibilities);
- Amended EC Directive 95/21 of 19/6/1995 on port state control
- EC Directive 1999/95 of 13/12/1999 concerning enforcement of seafarers’ hours of work on board ships calling at EC ports.

The first two Directives cover harbour authorities whilst the third Directive is covering labour inspection. The strengthening of labour inspection for the maritime sectors will require a more integrated and multidisciplinary approach in order to avoid that inspection is in practice limited to technical issues in relation to maritime safety. The future ILO consolidated maritime convention will require a more integrated approach as it will require port state control in relation to wider labour and social standards.

The same goes for the fishing sector. ILO work on new fishing convention is not that advanced as for the maritime transport sector. However closer cooperation between technical and labour inspection could improve overall efficiency of enforcement and prevention. The fishing sector is one of the priority sector for the European agency for OHS in Bilbao (this agency has no inspection competences but is providing information to EU stakeholders on OHS)

EU Member states work could be supported by an EU multidisciplinary committee covering different types of inspections. It could also be a forum of discussion and debate. Cooperation with the EU maritime agency could also be important.

La nouvelle pièce d'identité des gens de mer

Convention sur les pièces d'identité des gens de mer, 2003 (n° 185 de l'OIT)

1. Contexte

La Convention 185 de l'OIT a été adoptée le 19 juin 2003 dans le cadre de la Conférence Internationale du Travail (CIT) de l'OIT. La CIT est l'instance décisionnelle la plus importante de l'OIT et est composée de façon tripartite. La révision était effectuée selon la procédure d'urgence (une lecture en 2003 au lieu de deux lectures, c'est-à-dire en 2003 et 2004) suite aux événements du 11 septembre 2001 à New York. L'UE était impliquée dans la révision par le biais de la coordination CE au sein de la CIT selon les modalités d'interventions appliquées depuis l'avis 2/1991 du 19/3/1993 de la CEJ en matière de relation entre l'OIT et la CE.

Il s'agit d'une révision d'urgence de la Convention 108 (adoptée en 1958) de la pièce d'identité des gens de mer. Cette Convention révisée reprend les principes consacrés par la Convention 108 sur la facilitation de l'entrée des gens de mer pour la descente à terre, le transit ou le transfert (article 6). La carte d'identité des marins émise en application de la Convention a un objectif social et opérationnel important car elle permet aux marins (peu importe la nationalité), vis-à-vis aux parties contractantes de la Convention, de sortir du bateau (peu importe le pavillon) lors de l'escale dans un port, d'effectuer un transit ou d'effectuer un transfert. Sans carte d'identité le marin risque d'être bloqué sur son bateau pendant plusieurs mois. Il faut également souligner que les marins dotés d'une carte d'identité de marins peuvent être exemptés du contrôle à la frontière pour autant qu'il s'agisse de l'escale dans la localité du port ou communes limitrophes (Règlement établissant le code communautaire relatif au franchissement des frontières, par les personnes, adopté le 15 mars 2006¹⁷). Sans prévoir explicitement l'exemption de visa (possibilité que les États membres sont autorisés de prévoir, pour l'escale et/ou le transit, en vertu du Règlement n° 539/2001, fixant la liste des pays tiers dont les ressortissants sont soumis à l'obligation de visa pour franchir les frontières extérieures des États membres et la liste de ceux dont les ressortissants sont exemptés de cette obligation), ce Règlement indique au point 3.1 de l'annexe VII que « Par dérogation aux articles 4 et 7, les États membres peuvent autoriser les marins munis d'une pièce d'identité des gens de mer, délivrée conformément à la Convention de Genève du 19 juin 2003 (n° 185), à la convention de Londres du 9 avril 1965 ainsi qu'aux dispositions nationales pertinentes, à entrer sur le territoire des États membres en se rendant à terre pour séjourner dans la localité du port où leur navire fait escale ou dans les communes limitrophes, sans se présenter à un point de passage à condition qu'ils figurent sur le rôle d'équipage, préalablement soumis à une vérification des autorités compétentes, du navire auquel ils appartiennent ». L'obtention de cette dérogation reste néanmoins soumise à l'appréciation des États membres en fonction de leur position vis-à-vis de l'application des conventions précitées.

La révision de la Convention 108 s'était avéré nécessaire suite aux événements du 11 septembre 2001, afin d'améliorer le système d'identification des gens de mer, notamment par

¹⁷ O L105, de 13.4.2006, p. 1.

le biais de la sécurisation du document afin de diminuer les risques de falsification. L'article 3, qui porte sur la teneur et la forme de la pièce d'identité des gens de mer, précise ainsi que des données biométriques seront incluses dans le document. L'annexe I de la Convention présente le modèle du document.

L'article 4 indique que chaque Membre établit une base de données électronique avec l'ensemble des informations recueillies et enregistrées pour établir la pièce d'identité des gens de mer, et désigne un centre permanent pour répondre aux demandes pouvant être présentées par les services d'immigration afin de vérifier l'authenticité du document.

Pour le moment cette Convention a été ratifiée par 4 Etats : la Jordanie (2004), la France (2004), le Nigeria (2004) et la Hongrie (2005). Elle est entrée en vigueur en février 2005.

2. Enjeux pour l' UE

- La CE 25 dispose d'une flotte maritime importante. Une partie importante des marins travaillant sur les bateaux sous pavillon d'un des Etats membres provient des pays tiers. Le pays d'origine du marin est responsable de l'émission de la carte d'identité des marins, même pour les marins travaillant sur un bateau sous pavillon d'un EM. Les armateurs de la CE et les organisations syndicales des marins ont souligné l'importance de la carte d'identité pour le secteur européen.

- La CE dispose de ports importants et enregistrant de mouvements de marins significatifs: escale, transit, transfert.

- Le Règlement n° 539/2001 qui détermine le régime des visas pour entrée sur le territoire de l'UE laisse toute latitude aux Etats membres pour appliquer un régime spécifique aux marins selon les termes de la Convention 108 de l'OIT.

- La CE est très impliquée dans la consolidation des 60 instruments de l'OIT (conventions et recommandations) sur l'emploi et les conditions sociales des marins. L'adoption de cette convention consolidée et actualisée est prévue pour février 2006. La CE est impliquée selon les modalités prévues dans l'opinion de la CJE n° 2/91 du 19/03/1993.

3. Complications, problèmes et solutions éventuelles

Les complications sont de nature juridique, technologique et financière:

3.1. Juridique

Le problème juridique tient au fait que les Etats membres n'ont plus la possibilité de ratifier de leur propre chef une telle Convention qui comporte des dispositions relatives à l'exemption de visa. L'UE, de son côté, n'a pas non plus la possibilité de conclure un tel accord puisqu'elle n'est pas membre de l'OIT. Il est important de souligner que ce problème a été réglé par une décision (CE) du Conseil adoptée le 14 avril 2005 autorisant les Etats membres à ratifier ladite Convention¹⁸. Toutefois, ceux-ci n'y sont pas obligés et aucun délai de ratification ne leur est imposé¹⁹.

¹⁸ Décision 2005/367/EC (JO L136 du 30 mai 2005)

¹⁹ Dans les discussions au Conseil, les États membres ont refusé de façon unanime une ratification simultanée de la Convention 185.

3.2. Problèmes techniques et financiers.

Les données biométriques reprises dans la carte d'identité des marins sur base de gabarit (template) sont stockées dans un code-barres. Ce choix technologique pour le code-barres est repris dans la Convention 185. Lors de la CIT 2003 le groupe des travailleurs avait refusé le choix d'utiliser les images digitalisées des empreintes stockées sur une puce électronique utilisée dans l' UE, notamment pour les passeports selon les prescriptions ICAO- OACI.

Ce refus était basé sur des considérations explicites sur la protection de la vie privée. Les employeurs avaient en effet avoué lors de la CIT 2003 que certains armateurs douteux avaient utilisé des puces électroniques pour cacher des informations sur les activités syndicales du marin concerné.

L'ICAO-OACI a été consultée et impliquée dans les travaux de l' OIT.

De plus, à la demande explicite de l'UE (intervention de la Présidence Irlandaise) lors du Conseil d'administration de mars 2004, l'OIT avait accepté d'opter pour le "minutae based technology" pour la lecture du code-barres au lieu du "pattern based technology". La "pattern based technology" aurait posé un problème important.

Dans cette intervention l'UE avait également indiqué qu'elle était disposée à aider les pays en développement (souvent pays de résidence des marins travaillant sous pavillon des EM de l'UE) en ce qui concerne la technologie nécessaire pour l'édition et la lecture des codes-barres.

Entre temps l'OIT a sélectionné trois sociétés privées pour produire et distribuer la technologie sur base d'un standard inter opérable.

Le choix fait par l'OIT est donc quelque peu différent des solutions techniques préconisées aux niveaux européen et international pour assurer l'inter opérabilité des éléments biométriques pour les passeports. Pourtant il faut souligner que la carte d'identité des marins n'est pas un passeport ou un document de voyage. La question de l'inter opérabilité entre les bases de données biométriques des pièces d'identité des marins d'une part, et des passeports et/ou des visas d'autre part, n'a pas de solution pour le moment. Sur le plan pratique, la possibilité donnée par ce procédé d'avoir accès en temps réel à l'itinéraire du marin constitue un facteur de lutte contre l'immigration illégale non négligeable en facilitant le croisement des informations lors des contrôles au passage de la frontière.

Néanmoins il ne faut pas nécessairement équiper toutes les frontières avec des lecteurs code-barres. Les EM de l'UE pourraient concentrer l'installation des lecteurs dans les ports importants de commerce extérieur et dans certains aéroports. Il semble que cette solution soit envisagée par certains EM.

4. Faire progresser la mise en oeuvre

- Il y a 800.000 marins concernés en provenance à la fois des pays de l' UE et surtout des pays tiers (pays en développement) dont une grande partie travaille sous pavillon d'un EM de l'UE. Selon les armateurs et les organisations syndicales des marins, une ratification et une application rapides sont nécessaires pour des raisons sociales, humaines et opérationnelles.

Le MPTF/ livre vert pourrait souligner ceci.

- La Convention 185 a été adoptée par une organisation spécialisée de l'ONU (OIT), par une approche multilatérale et en respectant les procédures constitutionnelles de l'OIT. Les 25 EM de l'UE sont membres de l'OIT. La Commission participe comme observateur actif et elle contribue de façon significative à la coordination CE au sein de l'OIT. La Commission a intensifié sa coopération avec l'OIT (accord de coopération basé sur un accord de 1958, des échanges de lettres de 1989 et 2001; Communication du 18 mai 2004 sur la dimension sociale de la mondialisation; Communication sur l'agenda social européen du 9 février 2005 et communication sur le renforcement du système multilatéral). Il est important de reconnaître un choix effectué dans le cadre du système multilatéral. L'ensemble des EM de l'UE ont voté en faveur de la Convention 185 lors de son adoption. Les services concernés de la Commission ont participé aux travaux en juin 2003 (JLS, TREN, EMPL, RELEX).

> MPTF pourrait suggérer une ratification rapide par les 25 EM de l'EU.

- Le MPTF pourrait suggérer de concentrer les investissements des EM nécessaires pour la mise en œuvre de la Convention dans les ports de l'UE les plus importants du point de vue du commerce international et dans les aéroports les plus importants pour le transit et le transfert des marins.

> Le MPTF pourrait suggérer que les experts des EM et la Commission se concertent sur ce dossier notamment dans le cadre du groupe de travail "visa", "transports maritime", "social" ou d'autres groupes.

- Le BIT (l'administration de l'OIT) a conçu un programme de coopération concentré sur les pays les plus importants en matière d'origine des marins. La Communication du 12 avril 2005 sur la cohérence des politiques de l'UE en matière de développement et de coopération externe, la Communication du 13 juillet 2005 sur la politique du développement et la Communication du 3 août 2005 sur la programmation thématique et bien d'autres textes se réfèrent d'une manière ou une autre à la coopération externe en matière sociale, le travail décent, maritime, migration et autres éléments JLS.

> Le MPTF pourrait suggérer que la CE et les Etats membres soutiennent l'OIT et certains pays en développement pour l'installation et le fonctionnement des moyens technologiques pour produire, délivrer et utiliser les ID.