

Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC

Article 1

This Directive implements the Agreement on Maritime Labour Convention, 2006, concluded on 19 May 2008 between the organisations representing management and labour in the maritime transport sector (European Community Shipowners' Associations, ECSA and European Transport Workers' Federation, ETF) as set out in the Annex.

Article 2

The Annex to Council Directive 1999/63/EC is amended as follows:

1. in Clause 1, the following point 3 shall be added:
 3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned with this question. In this context due account shall be taken of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.;
2. in Clause 2, points (c) and (d) shall be replaced by the following:
 - (c) the term "seafarer" means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;
 - (d) the term "shipowner" means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.;
3. Clause 6 shall be replaced by the following:
 1. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Clause, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.
 2. An exception to strict compliance with the night work restriction may be made by the competent authority when:
 - (a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or
 - (b) the specific nature of the duty or a recognised training programme requires that the seafarers covered by the exception perform duties at night and the

authority determines, after consultation with the shipowners' and seafarers' organisations concerned, that the work will not be detrimental to their health or well-being.

3. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardise their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organisations concerned, in accordance with relevant international standards.;
4. Clause 13 shall be replaced by the following:
 1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.
 2. Exceptions can only be permitted as prescribed in this Agreement.
 3. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.
 4. In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organisations concerned, and giving due consideration to applicable international guidelines, prescribe the nature of the medical examination and certificate.
 5. This Agreement is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of points 1 and 2 of this Clause. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.
 6. The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognised by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.
 7. Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.
 8. Each medical certificate shall state in particular that:
 - (a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and

- (b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.
- 9. Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:
 - (a) a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;
 - (b) a certification of colour vision shall be valid for a maximum period of six years.
- 10. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:
 - (a) the period of such permission does not exceed three months; and
 - (b) the seafarer concerned is in possession of an expired medical certificate of recent date.
- 11. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.
- 12. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.
- 13. The nature of the health assessment to be made and the particulars to be included in the medical certificate shall be established after consultation with the shipowners' and seafarers' organisations concerned.
- 14. All seafarers shall have regular health assessments. Watchkeepers suffering from health problems certified by a medical practitioner as being due to the fact that they perform night work shall be transferred, wherever possible, to day work to which they are suited.
- 15. The health assessment referred to in points 13 and 14 shall be free and comply with medical confidentiality. Such health assessments may be conducted within the national health system.;
- 5. Clause 16 shall be replaced by the following:

Every seafarer shall be entitled to paid annual leave. The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2,5 calendar days per month of employment and *pro rata* for incomplete months. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated..

Article 3

- 1 Member States may maintain or introduce more favourable provisions than those laid down in this Directive.

2 The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.

3 The application and/or interpretation of this Directive shall be without prejudice to any Community or national provision, custom or practice providing for more favourable conditions for the seafarers concerned.

4 The provision of Standard A4.2 point 5(b) shall not affect the principle of responsibility of the employer as provided for in Article 5 of Directive 89/391/EEC.

Article 4

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties shall be effective, proportionate and dissuasive.

Article 5

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that management and labour have introduced the necessary measures by agreement, not later than 12 months after the date of entry into force of this Directive.

2 When Member States adopt provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. They shall forthwith communicate to the Commission the text of those provisions.

3 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 6

The application of the principle of substantial equivalence mentioned in the preamble of the Agreement is without prejudice to the obligations of the Member States emanating from this Directive.

Article 7

This Directive shall enter into force on the date of entry into force of the Maritime Labour Convention, 2006.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 16 February 2009.

For the Council

The President

O. LIŠKA