

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

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Management and labour, hereinafter referred to as 'the social partners', may, in accordance with Article 139(2) of the Treaty, request jointly that agreements concluded by them at Community level be implemented by a Council decision on a proposal from the Commission.
- (2) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006, desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.
- (3) The Commission has consulted management and labour, in accordance with Article 138(2) of the Treaty, on the advisability of developing the existing Community *acquis* by adapting, consolidating or supplementing it in view of the Maritime Labour Convention, 2006.
- (4) On 29 September 2006 the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) informed the Commission of their wish to enter into negotiations in accordance with Article 138(4) of the Treaty.
- (5) On 19 May 2008, the said organisations wishing to help create of a global level playing field throughout the maritime industry, concluded an Agreement on the Maritime Labour Convention, 2006, hereinafter referred to as 'the Agreement'. This Agreement and its Annex contain a joint request to the Commission to implement them by a Council decision on a proposal from the Commission, in accordance with Article 139(2) of the Treaty.

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- (6) The Agreement applies to seafarers on board ships registered in a Member State and/or flying flag of a Member State.
- (7) The Agreement amends the European Agreement on the organisation of working time of seafarers concluded in Brussels on 30 September 1998 by the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).
- (8) For the purpose of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a directive.
- (9) The Agreement will enter into force simultaneously with the Maritime Labour Convention, 2006, and the social partners wish the national measures implementing this Directive to enter into force not earlier than on the date of entry into force of the said Convention.
- (10) For any terms used in the Agreement and which are not specifically defined therein, this Directive leaves Member States free to define them in accordance with national law and practice, as is the case for other social policy Directives using similar terms, provided that those definitions respect the content of the Agreement.
- (11) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.
- (12) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (13) The provisions of this Directive should apply without prejudice to any existing Community provisions being more specific and/or granting a higher level of protection to seafarers, and in particular those included in Community legislation.
- (14) Compliance with the general principle of employer responsibility as provided for in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>(1)</sup>, and in particular in its Article 5(1) and (3), should be ensured.
- (15) This Directive should not be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement annexed to it.
- (16) This Directive and the Agreement lay down minimum standards. The Member States and/or the social partners should be able to maintain or introduce more favourable provisions.
- (17) The Commission has informed the European Parliament and the European Economic and Social Committee, in accordance with its communication of 14 December 1993 concerning the application of the Agreement on Social Policy, by sending them the text of its proposal for a Directive containing the Agreement.

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- (18) This instrument complies with the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union and in particular with Article 31 thereof which provides that all workers have the right to healthy, safe and dignified working conditions, to a limit on their maximum working time and to weekly and daily rest periods and an annual period of paid leave.
- (19) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (20) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making<sup>(2)</sup>, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.
- (21) 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 Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)<sup>(3)</sup> containing the European Agreement on the organisation of working time of seafarers in its Annex should therefore be amended accordingly.
- (22) The implementation of the Agreement contributes to achieving the objectives under Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

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- (1) OJ L 183, 29.6.1989, p. 1.
- (2) OJ C 321, 31.12.2003, p. 1.
- (3) OJ L 167, 2.7.1999, p. 33.