DECISIONS

COUNCIL DECISION

of 26 May 2014

on the position to be adopted on behalf of the European Union at the 103rd session of the International Labour Conference concerning amendments to the Code of the Maritime Labour Convention

(2014/346/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and, in particular, Article 218(9) in conjunction with Article 153(1)(b) and 153(2)(b) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Maritime Labour Convention, 2006, of the International Labour Organisation (ILO), hereinafter 'the Convention', establishes minimum working and living standards for all seafarers working on ships flying the flags of ratifying countries.

(2) Amendments to the Code of the Convention, hereinafter 'amendments', have been adopted by the 'Special Tripartite Committee' established under the Convention, hereinafter 'the Committee', at its meeting on 7-11 April 2014. The amendments are submitted for approval to the 103rd session of the International Labour Conference on 28 May-12 June 2014.

(3) The amendments concern the liability of shipowners with respect to compensation for claims due to death, personal injury and abandonment of seafarers.

(4) Parts of the rules under the Convention and the amendments are falling within the Union's competence and concern matters in respect of which the Union has adopted rules. The amendments will interplay with existing *acquis*, in particular in the areas of social policy and transport. In particular, most of the provisions of the Convention have been the subject of 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 [1]. The implementation of the Convention in the Union is further ensured by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on 'Port State Control' [2], as amended by Directive 2013/38/EU of the European Parliament and of the Council [3] and the 'Flag State Directive' 2013/54/EU of the European Parliament and of the Council [4] enforcing the Annex to Directive 2009/13/EC.

(5) The amendments to the Code of the Convention approved by the International Labour Conference will enter into force for all Parties in accordance with and under the conditions provided for by Article XV of the Convention. It follows that the amendments to the Code of the Maritime Labour Convention will constitute an act of a body set up by an international agreement which will produce legal effects.

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[1] OJ L 124, 20.5.2009, p. 30.
[2] OJ L 131, 28.5.2009, p. 57.
[3] Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control (OJ L 218, 14.8.2013, p. 1).
[4] Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006 (OJ L 329, 10.12.2013, p. 1).

(6) Given the above, in accordance with Article 218(9) TFEU, it is necessary that the Council adopts a decision to establish the position to be adopted on the Union's behalf, as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, authorising at the same time Member States to act jointly in the interest of the Union, which is not a member of the ILO [1],

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 103rd session of the International Labour Conference shall be to support, as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, the approval of the amendments to the Code of the Convention, adopted by the Committee at its meeting on 7-11 April 2014. The text of the amendments is attached to this decision.

2. The position of the Union as set out in paragraph 1 shall be taken by the Member States, acting jointly in the interest of the Union when approving the amendments to the Code of the Convention at the 103rd session of the International Labour Conference.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 26 May 2014.

For the Council
The President
Ch. VASILAKOS

[1] Opinion 2/91 of the European Court of Justice of 19 March 1993, ECR 1993-I, page 1061, para. 26.

ANNEX

FIRST MEETING OF THE SPECIAL TRIPARTITE COMMITTEE ESTABLISHED BY THE GOVERNING BODY IN ACCORDANCE WITH ARTICLE XIII OF THE MARITIME LABOUR CONVENTION, 2006 (MLC, 2006)

Text adopted by the Special Tripartite Committee established by the Governing Body in accordance with Article XIII of the MLC, 2006

Proposal for amendments to the Code relating to Regulation 2.5 of the MLC, 2006

A. Proposals relating to Standard A2.5

In the present heading, 'Standard A2.5 — Repatriation', replace 'A2.5' by 'A2.5.1'.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

Standard A2.5.2 — Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

   (a) fails to cover the cost of the seafarer's repatriation; or

   (b) has left the seafarer without the necessary maintenance and support; or

   (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

   (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;

(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and

(c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

B. Proposal relating to Guideline B2.5

At the end of the present Guideline B2.5, add the following heading and text:

Guideline B2.5.3 — Financial security

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. Proposal for a new appendix

Before Appendix A5-I, add the following appendix:

APPENDIX A2-I

Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

(a) name of the ship;

(b) port of registry of the ship;

(c) call sign of the ship;

(d) IMO number of the ship;

(e) name and address of the provider or providers of the financial security;

(f) contact details of the persons or entity responsible for handling seafarers' requests for relief;

(g) name of the shipowner;

(h) period of validity of the financial security; and

(i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. Proposals relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security for repatriation.

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance — Part I*, add the following item:

15. Financial security for repatriation (Regulation 2.5).

In Appendix A5-II, after item 14 under the heading *Declaration of Maritime Labour Compliance — Part II*, add the following item:

15. Financial security for repatriation (Regulation 2.5).

At the end of Appendix A5-III, add the following area:

Financial security for repatriation.

Proposal for amendments to the Code relating to Regulation 4.2 of the MLC, 2006

A. Proposals relating to Standard A4.2

In the present heading, 'Standard A4.2 — Shipowners' liability', replace 'A4.2' by 'A4.2.1'.

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

(b) there shall be no pressure to accept a payment less than the contractual amount;

(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;

(d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and

(e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

Standard A4.2.2 — Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term 'contractual claim' means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

B. Proposals relating to Guideline B4.2

In the present heading, 'Guideline B4.2 — Shipowners' liability', replace 'B4.2' by 'B4.2.1'.

In paragraph 1 of the present Guideline B4.2, replace 'Standard A4.2' by 'Standard A4.2.1'.

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

Guideline B4.2.2 — Treatment of contractual claims

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

C. Proposals for new appendices

After Appendix A2-I, add the following appendix:

APPENDIX A4-I

Evidence of financial security under Regulation 4.2

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

(a) name of the ship;

(b) port of registry of the ship;

(c) call sign of the ship;

(d) IMO number of the ship;

(e) name and address of the provider or providers of the financial security;

(f) contact details of the persons or entity responsible for handling seafarers' contractual claims;

(g) name of the shipowner;

(h) period of validity of the financial security; and

(i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

APPENDIX B4-I

Model Receipt and Release Form referred to in Guideline B4.2.2

Ship (name, port of registry and IMO number):.....

Incident (date and place):.....

Seafarer/legal heir and/or dependant:.....

Shipowner:.....

I, [Seafarer] [Seafarer's legal heir and/or dependant] (*) hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer's] (*) employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's] (*) right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated:.....

Seafarer/legal heir and/or dependant:.....

Signed:.....

For acknowledgement:

Shipowner/Shipowner's representative:

Signed:.....

Financial security provider:

Signed:.....

(*) Delete as appropriate.

D. Proposals relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability.

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance — Part I*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2).

In Appendix A5-II, as the last item under the heading *Declaration of Maritime Labour Compliance — Part II*, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2).

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability.