# Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014 (Text with EEA relevance)

## COUNCIL DIRECTIVE (EU) 2018/131

## of 23 January 2018

## implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014

## (Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 155(2), in conjunction with points (a), (b) and (c) of Article 153(1), thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), management and labour ('the social partners') are able to jointly request that agreements they conclude at Union level be implemented by a Council decision, on a proposal from the Commission.

(2) Council Directive 2009/13/EC[(1)] implemented the agreement concluded on 19 May 2008 by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to incorporate the mandatory provisions of the Maritime Labour Convention, 2006 ('the MLC') of the International Labour Organization (ILO) into Union law, in order to update the Union legislation in force with those standards of the MLC which were more favourable for seafarers. It aimed at improving working conditions for seafarers, particularly as regards employment agreements, working hours, repatriation, careers and skill development, accommodation and recreation facilities, food and catering, health and safety protection, medical care and complaint procedures.

(3) Following international expert meetings, the ILO launched a process to amend the MLC in order to address concerns relating, on the one hand, to the abandonment of seafarers and financial security and, on the other, to claims related to death or long-term disability of seafarers. The Special Tripartite Committee established under the MLC adopted two amendments on those issues at its meeting from 7 to 11 April 2014. Parts of the rules

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subject to the amendments fell within the Union's competence and concerned matters on which the Union had adopted rules, in particular in social policy and transport. On 26 May 2014 the Council therefore adopted Decision 2014/346/EU[(2)], setting out the position to be adopted on behalf of the Union at the 103rd session of the International Labour Conference (ILC). The position of the Union was to support the approval of the amendments to the MLC Code ('the 2014 amendments to the MLC').

(4) The 2014 amendments to the MLC were approved by the ILC at its 103rd session in Geneva on 11 June 2014 and entered into force on 18 January 2017. They relate to providing an effective financial security system to protect seafarers' rights in the event of abandonment and to assure compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. They improve and optimise the existing system for protecting seafarers, including the obligation for ships to carry documentary evidence on board of the financial security system and to extend the system to cover two new situations of abandonment. Those situations relate to cases in which seafarers have been left without the necessary maintenance and support or to cases in which the shipowner has unilaterally severed its ties with the seafarer, including failure to pay contractual wages for a period of at least 2 months.

(5) On 5 December 2016 the social partners in the maritime transport sector — the ECSA and the ETF — concluded an agreement ('the social partners' agreement') to amend Directive 2009/13/EC in accordance with the 2014 amendments to the MLC. On 12 December 2016 they requested that the Commission present a proposal for a Council directive under Article 155(2) of the TFEU in order to implement that agreement.

(6) The social partners' agreement reproduces the content of the mandatory provisions of the 2014 amendments to the MLC. The first amendment, on the financial security system in the event of abandonment of the seafarer, relates both to health and safety and to working conditions, and is thus covered by points (a) and (b) of Article 153(1) of the TFEU. The second amendment, on the requirements of the financial security system to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, is covered by point (c) of Article 153(1) of the TFEU, on social security and social protection of workers. The social partners' agreement therefore relates to matters covered by Article 153 of the TFEU and can be implemented by a Council decision on a proposal from the Commission, in accordance with Article 155(2) of the TFEU. For the purposes of Article 288 of the TFEU, the appropriate instrument to implement the social partners' agreement is a directive.

(7) In accordance with the Commission communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, the Commission has assessed the representative status of the signatory parties and the legality of each clause of the social partners' agreement.

(8) The social partners' agreement amends the agreement concluded on 19 May 2008 between ECSA and the ETF on the MLC, annexed to Directive 2009/13/EC, and incorporates into that Directive the 2014 amendments to the MLC in order to improve the working conditions, health and safety and social protection for seafarers on board ships flying the flag of a Member State.

(9) In amending Directive 2009/13/EC, the social partners' agreement will bring the mandatory provisions of the 2014 amendments to the MLC, which are already covered by the MLC supervisory system, within the scope of Directive 2013/54/EU of the European Parliament and of the Council[(3)] and of the Union law supervisory and monitoring system, including the jurisdiction of the Court of Justice of the European Union. This is likely to result in greater compliance by Member States and shipowners.

(10) Without prejudice to the provisions of the social partners' agreement on follow-up and review by the social partners at Union level, the Commission will monitor the implementation of this Directive and of the social partners' agreement.

(11) The Member States are able to entrust social partners with the implementation of this Directive where the latter jointly request this and provided that the Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

(12) Pursuant to Article 155(2) of the TFEU, the Commission has informed the European Parliament by sending it the text of its proposal for this Directive.

(13) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, and in particular Article 31 thereof.

(14) Since the objectives of this Directive, namely to improve the working conditions, health and safety and social protection of workers in the maritime transport sector, which is a cross-border sector operating under the flags of different Member States, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

(15) Directive 2009/13/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

This Directive implements the agreement concluded between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on 5 December 2016 to amend Directive 2009/13/EC in accordance with the 2014 amendments to the MLC.

*Article 2*

In line with the social partners' agreement, the Agreement concluded by the ECSA and the ETF on the Maritime Labour Convention, 2006, set out in the Annex to Directive 2009/13/EC is amended in accordance with the Annex to this Directive.

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*Article 3*

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 February 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or 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.

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

3 Member States may entrust social partners with the implementation of this Directive where social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

*Article 4*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 23 January 2018.

*For the Council*

*The President*

V. GORANOV