# Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) (Text with EEA relevance)

## COUNCIL DIRECTIVE (EU) 2017/159

## of 19 December 2016

## implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche)

(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) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Management and labour (‘the social partners’) may, in accordance with Article 155(2) of the Treaty on the Functioning of the European Union (TFEU), request jointly that agreements concluded by them at Union level be implemented by a Council decision on a proposal from the Commission.

(2) On 14 June 2007, the International Labour Organization (ILO) adopted the Work in Fishing Convention, 2007 (‘the Convention’). The Convention aims to create a single, coherent instrument to complete the international standards for living and working conditions for this sector, and incorporates revised and updated standards from existing international conventions and recommendations applicable to fishermen, as well as the fundamental principles found in other international labour conventions.

(3) The Commission consulted the social partners, in accordance with Article 154(2) TFEU, on whether to promote the application within the Union of the provisions of the Convention.

(4) On 21 May 2012, the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF), and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche), wishing to undertake a first step towards a codification of the Union's

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social *acquis* in the sea fishing sector and to help create a level playing field for the sea fishing sector in the Union, concluded an agreement concerning the implementation of the Convention ('the Agreement').

(5) On 10 May 2013, those organisations requested the Commission to implement the Agreement by a Council decision in accordance with Article 155(2) TFEU.

(6) For the purposes of Article 288 TFEU, the appropriate instrument to implement the Agreement is a directive.

(7) The Commission has drafted its proposal for a directive, in accordance with its Communication of 20 May 1998 on adapting and promoting social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.

(8) This Directive should apply without prejudice to any existing Union provisions which are more specific or which grant a higher level of protection to all fishermen.

(9) 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.

(10) This Directive and the Agreement annexed hereto lay down minimum standards; the Member States and the social partners may maintain or introduce more favourable provisions.

(11) Without prejudice to the provisions of the Agreement on follow-up and review by the social partners at Union level, the Commission should monitor the implementation of this Directive and the Agreement, and should carry out an evaluation.

(12) The social partners expect the national measures implementing this Directive to enter into force not earlier than on the date of entry into force of the Convention. Accordingly, this Directive should enter into force at the same time as the Convention.

(13) The Agreement applies to fishermen working in any capacity under a contract of employment or in an employment relationship on board fishing vessels engaged in sea fishing, flying the flag of a Member State or registered under the plenary jurisdiction of a Member State.

(14) In order to protect the occupational safety and health of the fishermen working in any capacity under a contract of employment or in an employment relationship, the Agreement may further apply to all other fishermen present on board the same fishing vessel.

(15) As regards any terms used in the Agreement which are not specifically defined therein, Member States may define those terms 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.

(16) This Directive and the Agreement annexed hereto should take into account the provisions on the management of fishing capacity as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(1)].

(17) The Member States may entrust social partners with the implementation of this Directive, where social partners jointly request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

(18) The Commission has informed the European Parliament pursuant to Article 155(2) TFEU, by sending the text of its proposal for a Directive containing the Agreement.

(19) This Directive respects the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 20, 31 and 32 thereof.

(20) Since the objectives of this Directive, namely to improve living and working conditions and to protect health and safety of workers in the sea fishing 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 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.

(21) According to the settled case-law of the Court of Justice of the European Union[(2)], the fact that an activity referred to in a directive does not yet exist in a Member State cannot release that Member State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed. Both the principle of legal certainty and the need to secure the full implementation of directives both in law and in fact require that all Member States reproduce the rules of the directive concerned within a clear, precise and transparent framework providing for mandatory legal provisions. Such an obligation applies to Member States in order to anticipate any change in the situation existing in them at a given point in time and in order to ensure that all legal persons in the Community, including those in Member States in which a particular activity referred to in a directive does not exist, may know with clarity and precision, what are, in all circumstances, their rights and obligations. According to the case-law, it is only where transposition of a directive is pointless for reasons of geography that such transposition is not mandatory. Member States should, in such cases, inform the Commission thereof.

(22) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[(3)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAS ADOPTED THIS DIRECTIVE:

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*Article 1*

This Directive shall implement the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between management and labour ('social partners') at Union level in the sea-fisheries sector, namely the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

The text of the Agreement is set out in the Annex to this Directive.

*Article 2*

1 Member States may maintain or introduce provisions more favourable to workers in the sea fishing sector 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 social partners to adopt, in the light of changing circumstances, different laws and regulations or make different 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 interpretation of this Directive shall be without prejudice to any Union or national provision, custom or practice providing for more favourable conditions for the workers concerned.

*Article 3*

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 4*

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 November 2019. They shall immediately inform the Commission thereof.

When Member States adopt those 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.

2 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 5*

The Commission shall, after consulting the Member States and the social partners at Union level, present a report to the Council on the implementation, application and evaluation of this Directive no later than 15 November 2022.

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*Article 6*

This Directive shall enter into force on the day of entry into force of the International Labour Organization Work in Fishing Convention, 2007.

The Commission shall publish in the *Official Journal of the European Union* the date of entry into force of that Convention.

*Article 7*

This Directive is addressed to the Member States.

Done at Brussels, 19 December 2016.

*For the Council*

*The President*

L. SÓLYMOS