

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC’

COM(2013) 798 *final* — 2013/0390 COD

(2014/C 226/06)

Rapporteur: **Mr POLYZOGOPOULOS**

On 19, 21 and 29 November 2013 respectively, the European Commission, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 153(2) and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC

COM(2013) 798 *final* — 2013/0390 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 10 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 136 votes with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC endorses the proposal for a directive aimed at improving the level of protection of rights enshrined in the EU Charter of Fundamental Rights and ensuring a level playing field for competition at EU level.

1.2 The EESC welcomes the proposal to address exclusions which may make it harder for seafarers to enjoy the same rights under European labour law as workers with shore-based jobs.

1.3 The EESC thinks that the proposed directive is a step in the right direction to encourage young people to take up professions in the maritime and fishery sectors and make seafaring careers viable, as it will make these sectors more attractive and, in terms of labour rights, place them on an equal footing with shore-based occupations.

1.4 The EESC notes that the Commission has opted for a flexible approach taking account of the specificities and needs of this vital sector: it looks into four distinct policy options and assesses on a case-by-case basis whether the characteristics of the sector can objectively justify a differentiated approach, thus steering clear of a ‘one size fits all’ type of solution.

1.5 The EESC considers that the proposed directive could help to promote employment in the maritime and fishery sectors and improve living and working conditions, social protection and dialogue between management and labour, consistent with the general policy aims envisaged under Article 151 TFEU.

1.6 The EESC notes that a preparatory study carried out for the Task Force on maritime employment and competitiveness has estimated that the gap between supply and demand in seafarers in the OECD countries may increase to 70 000 for officers and 221 000 for ratings⁽¹⁾. In order to maintain the equivalent 2010 situation regarding the proportion of European officers in the worldwide workforce, the number will have to increase by 10 % over the next ten years in western EU countries and by 20 % in the eastern ones⁽²⁾.

⁽¹⁾ Sulpice, Guy. 2011. *Study on Seafarers Employment: Final Report*. European Commission, DG for Mobility and Transport — Directorate C — Maritime transport (MOVE/C1/2010/148/SI2.588190). page 34.

⁽²⁾ *Ibid.*, page 35.

1.7 The EESC also considers that the proposed directive could make for a more level playing field for competition in the European market by tackling a situation where certain companies are exempted from certain obligations, notably in terms of information and consultation, which are mandatory for competing companies based in other Member States. It points to the need to ensure a level playing field within the EU but also internationally, given the international nature of maritime activities and competition, and stresses the importance of actively discouraging social dumping and unfair competition. However, many land based activities are subject to international competition and the fact that it also exists in the maritime sector is no reason to exclude seafarers from important labour and social rights.

1.8 Nevertheless, the EESC notes that the proposed directive alone will not suffice to make the maritime sector more attractive. It will have to be accompanied by measures and initiatives already put forward by the EESC in the areas of training, education, research, health and safety promotion, entrepreneurship and innovation leading to the provision of safe, stable and competitive services of a high quality.

1.9 Given that broader consultations and assessments of the impact of doing away with the exceptions came several years before the proposal for a directive, the EESC would strongly recommend reducing the transition period of five years for implementing the directive (Article 8 of the proposed directive) to three years.

2. Introduction

2.1 Europe's maritime industry is a world leader, providing seafaring jobs for 345 455 people⁽³⁾. Some 30 % of merchant vessels are registered in one of the EU Member States, whilst in terms of gross tonnage (GT), the EU accounts for 19,2 % of the global fleet⁽⁴⁾.

2.2 Fishing and the processing of fish products provide jobs for more than 350 000 people, with five Member States (Denmark, Spain, France, the Netherlands and the United Kingdom) accounting for 60 % of EU production, whilst the fishing industry in the EU as a whole lands an annual catch of approximately 6.4 million tonnes of fish⁽⁵⁾.

2.3 However, globalisation, particularly at the present time of crisis, has posed a serious challenge for jobs and competitiveness in the maritime sector, inevitably affecting various aspects of employment in terms of quality and quantity of jobs.

2.4 More generally, gradual deregulation in the maritime labour market since the early 1980s⁽⁶⁾ has led to a decline in the number of European seafarers, a shortage of properly trained personnel and recruitment of crews from third countries. These trends can be attributed⁽⁷⁾, amongst other things, to career constraints, isolation and distance from families and low job status, coupled with the impression that jobs in this sector are insecure and working conditions poor.

2.5 The causes of this decline can also be ascribed to supply and demand and to competitive pressures in the maritime sector which, at a difficult time of globalisation and structural, cyclical crisis, can also have the effect of driving wages down.

3. The proposal for a Directive

3.1 The present proposal introduces amendments to directives⁽⁸⁾ which are already in force and either exempt Member States or allow them, without express justification, to exclude seagoing workers and/or fishermen from their scope. Decisions on the use of these exclusions have varied from Member State to Member State.

⁽³⁾ SWD(2013) 461 final.

⁽⁴⁾ ECSA (European Community Shipowners' Association), Annual Report 2011-2012.

⁽⁵⁾ Eurostat, Fishery statistics, September 2012.

⁽⁶⁾ Silos, J. M., Piniella, F., Monedero, J., & Walliser, J. (2012). *Trends in the global market for crews: A case study*. Marine Policy, 36(4), pp. 845–858.

⁽⁷⁾ COM(2006) 275 final Volume II — ANNEX, chapter 2.5.

⁽⁸⁾ Directives 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer; 2009/38/EC on the establishment of a European Works Council; 2002/14/EC establishing a general framework for informing and consulting employees; 98/59/EC on collective redundancies; 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings; 96/71/EC concerning the posting of workers in the framework of the provision of services.

3.2 In particular, the proposal for a directive recognises an unconditional right to information and consultation of seagoing workers in all the directives which previously allowed for exclusions and derogations from this right.

3.3 Given that the best approach might vary from one directive to another and following an assessment of the impact, the scope and grounds for exclusion, the Commission has decided on a combination of the following four policy options:

- Policy option 1: no action (Posting of Workers Directive);
- Policy option 2: derogation subject to the guarantee of an equivalent level of protection (Information and Consultation Directive);
- Policy option 3: suppression of the exclusions (European Works Council and Insolvency Directives);
- Policy option 4: adaptation of rules (specific provisions) to the special characteristics of the sector (Collective Redundancies and Transfer of Undertakings Directives).

4. Policy framework

4.1 The Green Paper 'Towards a future Maritime Policy for the Union' ⁽⁹⁾ raised the issue of the exclusion of maritime sectors from European labour and social law and of their reassessment in close cooperation with the social partners, while also stressing the importance of maritime skills when it comes to competitiveness and sustainable maritime employment, given the falling number of European seafarers.

4.2 In its communication of 10 October 2007 ⁽¹⁰⁾, the Commission undertook to improve the legal framework for the maritime professions, noting that there is no reason to exclude workers from the scope of application of certain directives where it is not entirely justified.

4.3 In the Blue Paper on an integrated maritime policy (IMP) for the European Union, the Commission reiterated its commitment to re-examining, in close cooperation with the social partners, those areas of labour law from which the maritime professions are excluded ⁽¹¹⁾; the purpose of IMP, meanwhile, is to generate more and better jobs and vocational qualifications in response to the worrying decline in employment levels in the maritime professions.

4.4 The European Parliament, meanwhile, has called in a resolution ⁽¹²⁾ for all workers to be granted access to the same level of protection without certain groups being automatically excluded from the current safety net, which is what often happens to seafarers, ship workers and/or off-shore workers, and for the law in force to apply to all, regardless of workplace.

4.5 The Commission recently reaffirmed its objective to increase the number and quality of jobs in the maritime sector in its Communication on Blue Growth ⁽¹³⁾, and again in the Limassol Declaration, endorsed by the European Ministers responsible for Integrated Maritime Policy ⁽¹⁴⁾.

5. Comments

5.1 The EESC would note that the proposed directive, which was published following wide-reaching specific and general consultations, stems directly from the above-mentioned policy framework. It is the logical culmination of clearly stated objectives, commitments and concerns regarding the future of the maritime professions and aims to provide an effective legislative framework that takes the global maritime context into account.

⁽⁹⁾ COM(2006) 275 final of 7.6.2006; Chapter 2.5.

⁽¹⁰⁾ COM(2007) 591 final of 10.10.2007.

⁽¹¹⁾ COM(2007) 575 final of 10.10.2007.

⁽¹²⁾ 2007/2023(INI) of 11.7.2007.

⁽¹³⁾ COM(2012) 494 final of 13.9.2012.

⁽¹⁴⁾ Limassol Declaration, 7.10.2012.

5.2 The EESC considers the proposal for a directive to be consistent with other cross-cutting policies and objectives, such as the Europe 2020 strategy, especially with regard to employment, and the agenda for new skills and jobs⁽¹⁵⁾, which contains basic measures to improve the quality of working conditions and, more specifically, revisits current legislation with a view to securing a smarter legal framework for employment, and health and safety at work.

5.3 The EESC has already drawn attention to the exclusion of seafarers and fishermen from European social law and the need to put an end to discrimination, regardless of the grounds, wherever this is deemed appropriate, and calls on the Commission to re-examine the exceptions in close cooperation with both sides of industry⁽¹⁶⁾.

5.4 In previous opinions⁽¹⁷⁾, the EESC has also made a number of important remarks and suggestions in connection with a series of issues relating to European maritime policy and has taken a detailed stance on general labour and social policy issues relating to the maritime professions and, more specifically, the issues of education/training/certification, recruitment and safety at sea, demonstrating the need to encourage and attract young people into maritime careers and retain them by ensuring a high level of know-how and specialisation within European maritime clusters.

5.5 The EESC's comments for instance on human resources, seamanship and maritime know-how, included in its opinion on strategic goals and recommendations for the EU's maritime transport policy until 2018, remain especially relevant, as do its suggestions regarding the fight against piracy⁽¹⁸⁾ which, along with criminalisation of seafarers, has had a deterrent effect on the maritime professions.

5.6 The EESC would point out that the wide range of general and specific consultations highlighted conflicting opinions regarding whether and which exceptions were justified, but revealed a consensus regarding the need for a level playing field and the role that social legislation can play. The EESC regrets, however, that — in spite of the written consultations — the subject did not figure on the agenda of the social dialogue committee.

5.7 The EESC would underline the comment made by the Task Force on maritime employment and competitiveness⁽¹⁹⁾ that developments in communications technology mean that exceptions based on the itinerant nature of ships and difficulties communicating with ships at sea can no longer be justified, particularly when it comes to information and consultation.

5.8 The EESC notes that information and communications technology (ICT) is gradually being introduced on board vessels, but in some instances it will be a while before it is fully operational owing to technical difficulties, particularly in the case of small and medium-sized enterprises. It would therefore urge the Commission to draw up a package of investment and training measures for this sector so that the proposed directive can be effectively implemented.

5.9 The EESC points out that the European Union is a world leader in the area of labour rights and calls on the Commission to spearhead efforts to upgrade international standards so that all the Member States ratify the ILO's Maritime Labour Convention (MLC, 2006) and to secure broad international cooperation with a view to achieving a more effective application system, compliance with minimum ILO standards by all countries that have ratified the MLC and ratification by a greater number of countries. It should be emphasised that although EESC supports the MLC, 2006, it is recognised that it does not provide the same rights as those afforded under the Directives in question.

⁽¹⁵⁾ COM(2010) 682 final of 23.11. 2010.

⁽¹⁶⁾ OJ C 168, 20.7.2007, pp. 55-56.

⁽¹⁷⁾ OJ C 158, 26. 5.1997, p. 11; OJ C 14, 16.1.2001, p. 41, OJ C 80, 3.4.2002, pp. 9-14; OJ C 133, 6.6.2003, pp. 23-25; OJ C 157, 28.6.2005, pp. 42-47; OJ C 157, 28.6.2005, pp. 53-55; OJ C 318, 23.12.2006, pp. 195-201.; OJ C 97, 28.4.2007, pp. 33-34; OJ C 168, 20.7. 2007, pp. 50-56; OJ C 211, 19.8.2008, pp. 31-36; OJ C 151, 19.8.2008, p. 35; OJ C 255, 22.9.2010, pp. 103-109; OJ C 107, 6.4.2011, pp. 64-67; OJ C 248, 25.8.2011, pp. 22-30, OJ C 24, 28.1.2012, pp. 146-153 , OJ C 76, 14.3.2013, pp. 15-19; OJ C 161, 6.6.2013, pp. 87-92; OJ C 43, 15.2.2012, pp. 69-72; OJ C 299, 4.10 2012, pp. 153-157 and TEN/533 of 16.6.2013 COM(2013) 510 final.

⁽¹⁸⁾ OJ C 255, 22.9.2010, pp. 103-109 and OJ C 76, 14.3.2013, pp. 15-19.

⁽¹⁹⁾ <http://ec.europa.eu/transport/modes/maritime/seafarers/doc/2011-06-09-tfmec.pdf>.

5.10 If the decline in maritime employment levels is to be reversed, measures are needed to carry through the institutional changes proposed with a view to securing well-designed maritime education and training in order to boost skill levels, thus guaranteeing greater employment opportunities and increasing professional mobility between sectors.

5.11 It also remains of paramount importance to bolster SMEs, as they form the backbone of the European maritime sector and have paid a high price during the crisis. Furthermore, joint projects must be promoted that can boost innovation and develop new business concepts and, more generally, offer robust support for private enterprise and EU maritime sector institutions.

5.12 Doing more to champion and harness the potential of maritime clusters, which are vitally important to the EU's economic and social interests, could help, not least, to secure alternative employment for fishermen and women.

5.13 The EESC would note the need for systematic data collection and the harmonisation of sources in relation to maritime sector employment as the figures of the various sources differ significantly; this would boost the credibility of future studies.

5.14 The EESC welcomes the removal of the possibility of excluding share-fishermen from the scope of the Insolvency Directive (Article 1 of the proposed directive).

5.15 As regards Directive 2001/23 (transfer of undertakings), the EESC points to the special features affecting transfers of vessels involving a change of flag and notes that seafarers could end up being employed under different or less favourable conditions because of variations in collective agreements. In view of this, it urges the Commission to draw up new provisions to ensure that this directive also applies to transfers of ships with a change of flag, otherwise it might have the opposite effect by eroding seafarers' rights. It would ask the European Commission to take account of the above comments.

5.16 The EESC notes that the Commission is endeavouring to take into consideration the special characteristics of maritime transport and maritime labour particularly in respect of Directive 1998/59 (collective redundancies) and stresses the need for legal certainty regarding employment contracts and to safeguard investments, as well as to prevent social dumping and unfair competition.

5.17 The EESC proposes the following amendment to Article 1(2) of Directive 2008/94/EC on the protection of employees in the event of employer insolvency:

Subject to the following proviso, Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this directive, by virtue of the existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this directive. The above provision must under no circumstances be understood to mean that seafarers or fishermen may be excluded.

5.18 The EESC considers that the review clause (Article 7 of the proposed directive) aimed at monitoring the implementation/application in the Member States of Articles 4 and 5, particularly concerning two key issues — the phenomenon of flagging out and the level of employment of EU seafarers — guarantees the application of the proposed regulations in a way that will take account of the sector's particularities.

5.19 The EESC underlines the key role of employers and employees in questions relating to labour law. It is convinced that the social partners will make a decisive contribution to broadening the dissemination of best practice and to attracting young people into maritime careers, while increasing opportunities for maritime employment in the EU and making full use of social dialogue in practice so as to ensure that this legislative initiative is introduced in a correct and productive manner.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE
