



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.6.2006
COM(2006) 288 final

2006/0103 (CNS)

Proposal for a

COUNCIL DECISION

**on authorising Member States to ratify, in the interests of the European Community, the
2006 Consolidated Maritime Labour Convention of the International Labour
Organisation**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The consolidated maritime labour Convention of the International Labour Organization (hereinafter called the ILO) on Maritime labour was adopted on 23 February 2006 by the maritime session of the International Labour Conference of the ILO convened in Geneva by the Governing Body of the International Labour Office at its 94th session (hereafter called the 2006 Convention).

In January 2001, the ILO began to consolidate and to update the maritime standards contained in the current conventions and recommendations in order to have a single legal instrument adopted by the conference of the organisation, namely the consolidated Convention on maritime labour. This Convention is aimed at establishing minimum international standards for the entire sector that are simple, clear, coherent, acceptable and applicable so as to provide an outline maritime labour code.

The social standards applicable needed to be redefined on account of disaffection with the occupation of seafarers and the human factor in maritime accidents. Over 1.2 million seafarers are employed in the maritime industry worldwide and this activity is vitally important to the world economy, accounting, as it does, for 90% of the trade.

The ultimate aim of the 2006 Convention is to achieve and maintain a level playing field in the shipping industry by fostering the promotion of decent living and working conditions for seafarers and fairer conditions of competition in the world and thereby to remedy the low rate of ratification of many conventions in the field of maritime labour.

The consistency and compatibility between the ILO provisions and the community Acquis has been followed-up in the EU coordination. This was particularly relevant for some areas of the Convention that fall within the exclusive community competence, namely the social security schemes' coordination, flowing from Regulation 1408/71/EEC of 14 June 1971 on the application of social security system schemes to employed persons and their families moving within the Community adopted pursuant to Article 42 of the EC Treaty. Regulation 1408/71 of 14 June 1971 has been replaced by Regulation 883/2004/EC and its application has been extended to third country nationals by Regulation 859/2003. Regulation 1408/71 sets up specific provisions for seafarers in Article 13§2c) and 14 b). Concerning third countries nationals, Regulation 859/2003 of 1 June 2003 sets out rules applicable and provides them with the same social security protection rights as Union nationals when moving within the EU.

In the ILO text, both the flag state and the state of residence are responsible but for different areas of social security coverage whereas under EC law, the flag state is, as a rule, designated as the country whose social security legislation should apply according to Regulation 1408/71 and Regulation 883/2004.

To regulate potential law conflicts between the 2006 Convention and the EC law Acquis on the coordination of social security schemes, a savings clause was included in the text during the Preparatory Technical Maritime Conference in Geneva (13/24 September 2004). This clause should safeguard and ensure the precedence of EC law

on the coordination of social security schemes in case the Convention leads to an outcome which differs from the EC rules on this matter.

In fact, in accordance with the AETR case law of the Court of Justice on external competence, Member States are no longer able to ratify on their own initiative the 2006 Convention as its provisions concerning the coordination of social security regimes affect the exercise of the Community's exclusive competence in this area.

In this context and in order to ensure compliance with the sharing of competences between the Community and Member States as laid down by the Treaty, the Commission proposes that the Council should authorise the Member States to ratify the 2006 Convention in the interests of the Community.

- **General context**

The 2006 Convention is in line with the core mandate of the ILO, which includes the establishment of international labour standards for maritime transport with a view to promoting decent working conditions for seafarers. The 2006 Convention takes into account the fact that, given the global nature of the shipping industry, seafarers need special protection.

The 2006 Convention sets out maritime labour standards grouped together under 5 headings: the minimum conditions required to work on-board; employment conditions, accommodation and catering, social protection and welfare and the application of and compliance with the provisions of the Convention. The text spells out the rights of seafarers regardless of the flag of the vessel on which they serve and sets up obligations incumbent respectively on shipowners, flag states, port states and labour supplying states.

For its implementation, the 2006 Convention requires flag States to put in place a firm enforcement system based on a certification scheme and periodic inspections. States will issue a certificate to ships flying their flag once the competent authorities have checked that working conditions on-board comply with the national laws and regulations adopted to implement the 2006 Convention. The 2006 Convention lays on the mechanism of "no more favourable treatment" clause to ensure that the ships of States that have not ratified the Convention do not receive more favourable treatment than ships that fly the flag of a State that has ratified it.

There is a substantial community Acquis deriving from the Articles 42; 71; 137; 138 of the Treaty on a wide range of issues covered by the 2006 Convention. Shared competence matters affected by the 2006 Convention represent the bulk of the provisions of the text. The Community competence has been exercised inter alia in fields such as working conditions, equality and non discrimination, health protection, medical care, prevention of accidents, welfare, port state control and enforcement of provisions related to the working hours of seafarers on board ships calling at Community ports. It should be noted that some areas covered by the Convention are not governed by specific Community legislation, such as accommodation requirements, recruitment and placement agencies.

Concerning the port state control, Directive 1995/21/EC on port state control of shipping refers to ILO Convention 73 concerning medical examination of seafarers, in

its annex 2, containing the list of certificates and documents and to ILO conventions pertaining to food, potable water, sanitary conditions on-board and heating, in its annex 6, setting criteria for the detention of a ship. ILO Convention 147 on merchant shipping is also referred to in the definitions fixed in the Directive 1995/21. The substitution of the 2006 Convention for the ILO existing conventions has a direct impact on Directive 1995/21.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

Not applicable

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Not relevant

Then there is no need to consider several options.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The application of the Community rules on areas covered by the 2006 Convention should be preserved and a clear signal should be given to the rest of the world on the importance the Community attaches to the 2006 Convention and to the working and living conditions of seafarers.

It follows from the ILO's operating rules that the process of signature before ratification which exists in other fora is replaced here by a voting procedure (which took place at the Labour International Conference on 23 February 2006) which is equivalent to signature, but the 2006 Convention has not yet entered into force. Only States may accede to the 2006 Convention. However the European Commission was strongly involved in the preparation and negotiations through the European Union coordination in the ILO. Given the tripartite nature of ILO, states and employers' and workers' delegates took part in the negotiations and to the vote on the adoption of the

2006 Convention. The European Commission was present as an observer and did not take part in the negotiations as such but it has taken note of the favourable vote of the Member States which took part in the negotiations on the 2006 Convention as well as of the need for it to enter into force at the earliest opportunity.

In view of the fact that competence over coordination of social security schemes is a Community competence, the Commission proposes that the Council should authorise those Member States which are bound by Community rules in this area to ratify the 2006 Convention in the interests of the Community.

The proposed Decision will therefore enable Member States to take without further delay all the steps necessary for ratification.

- **Legal basis**

Article 42 of ECT

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Not relevant

Not relevant

- **Choice of instruments**

Proposed instruments: other

Other means would not be adequate for the following reason(s).

Not relevant and not adequate

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Detailed explanation of the proposal**

Not relevant

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**on authorising Member States to ratify, in the interests of the European Community, the
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 42 in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The 2006 consolidated Convention of the International Labour Organisation (hereinafter referred to as the ILO) on maritime labour was adopted on 23 February 2006 by the maritime session of the International Labour Conference of the ILO convened in Geneva.
- (2) This Convention brings a major input in the shipping sector at international level in promoting decent living and working conditions for seafarers and fairer competition conditions for operators and shipowners and it is therefore desirable that its provisions should be applied as soon as possible.
- (3) This new legal instrument lays the foundations for an international maritime labour code by setting minimum labour standards.
- (4) The European Community seeks to achieve the establishment of a level playing field in the maritime industry.
- (5) Article 19§8 of the ILO Constitution states that “in no case, shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

¹ OJ C , , p. .

² OJ C , , p. .

- (6) Some articles of the Convention fall within the Community's exclusive competence in the area of social security schemes coordination.
- (7) The Community cannot ratify the Convention, as only Member States can be parties thereto.
- (8) The Council should therefore authorise the Member States which are bound by the Community rules on social security schemes coordination based on Article 42 of the Treaty to ratify the Convention in the interests of the Community, under the conditions laid down in this Decision

HAS ADOPTED THIS DECISION:

Article 1

The Member States are hereby authorised to ratify the 2006 ILO consolidated Maritime Labour Convention, adopted on 23 February 2006.

Article 2

The Member States shall take the necessary steps to deposit their instruments of ratification of the Convention with the Director-General of the International Labour Office before 31 December 2008. The Council will review the progress on the ratification before June 2008.

Article 3

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council
The President*