

## ROADMAP

Title of the initiative: **Proposal for a revision of exclusions concerning seafaring workers contained in Directives 2002/74/EC, 94/45/EC, 2002/14/EC, 98/59/EC, 2001/23/EC and 96/71/EC**

Type of initiative (CWP/Catalogue/Comitology):  
Lead DG: EMPL  
Expected date of adoption of the initiative : 2011  
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Version No: 2

### Initial IA screening & planning of further work

#### A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The Green Paper "Towards a future maritime policy for the Union" (2006) underlined the importance of a stable, simple and more consolidated regulatory framework for a competitive maritime economy and the need to develop an integrated approach. In this context the Green paper raised the issue of the exclusion of maritime sectors from parts of the European labour and social legislation and asked for its reassessment in close cooperation with the social partners.

The European Parliament in its Resolution of 11 July 2007 (2007/2023(INI)) requested "that all workers have access to the same level of protection and that certain groups are not excluded by default from the broadest level of protection, such as is currently often the case for seafarers, workers on vessels and offshore workers". The European Economic and Social Committee noted "the exclusion of fishermen and seafarers from European social legislation on a number of issues (eg: the Directive on collective redundancies, on transfer of undertakings, on information/consultation and for posting of workers in the framework of the provision of services). It stated that "irrespective of the reasons behind these exclusions, it is important to put an end to that discrimination where appropriate. It, therefore, invited the Commission to reassess these exclusions in close cooperation with social partners" (paragraph 1.7 of TEN/255 CESE 609/2007, 3 April 2007).

The Commission insisted on its commitment to "improving the Community legal framework for workers in the seafaring professions".

On 10 October 2007 the Commission adopted a Communication entitled "Reassessing the regulatory social framework for more and better seafaring jobs in the EU" by means of which it launched a first phase consultation of the social partners at Community level provided for in Article 138(2) of the Treaty.

On 14 April 2009 the Commission launched a second stage consultation of the social partners (C/2009/2211), which finalised in December 2009.

General Affairs and External Relations Council of 16 November 2009 acknowledged the progress achieved in the field of the integrated maritime policy and called on the Commission to maintain the momentum behind it. It pointed to the need to enhance a solid social dimension for maritime activities.

What are the main problems identified?

The exclusion of seafaring workers from the scope of some directives in the area of labour law is largely the outcome of Council decisions taken during the legislative process and does not appear to correspond to any openly stated objective reason or purpose. It was not foreseen in the original Commission proposals for any of the directives at stake. Such exclusions have as a result a lower degree of protection offered to seagoing workers as compared to on-shore workers. Also such exclusions do not contribute to the application of specific solutions, more adapted to the concrete situation of such workers. Finally, only some Member States use the opportunity given by EU Directives to exclude seafarers from their application, which has given rise to a very unequal treatment of the same professionals among Member States, without an apparent reason for such differences.

Where sufficiently strong reasons exist to maintain the existing exclusions or derogations, consideration should be given to whether specific EU legislation for the sector is the most appropriate solution to guarantee to seafaring professions the same level of protection enjoyed by other workers under EU law. In this context, the particular legal conditions applying in the Member States need to be examined in order to make sure that the seagoing professions enjoy adequate levels of protection, particularly in the cases of conditional exclusions, which oblige Member States to establish more specific regulation or alternative guarantees, ensuring the same level of protection.

Who is affected?

Those Member States that make use of the exclusions authorised by the Directives, employers and employees in the maritime transport and fishing sectors in such member States. Indirect impacts cover the whole maritime cluster.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

The action aims to reassess some of the exclusions concerning seafaring workers, existing within EU social law. Action at EU level is necessary in order to propose amendments to pre-existing EU legislation. Each potential proposal will be based on the same legal basis as the directive it is amending.

## **B. Objectives of EU initiative**

What are the main policy objectives?

- 1) - To improve the Community legal framework for workers in the seafaring professions in order to contribute to the creation of more and better jobs within the sector.
- 2) - To grant seafaring workers an equivalent level of legal protection to that enjoyed by workers covered by the general scope of application of Directives 2002/74/EC, 94/45/EC, 2002/14/EC, 98/59/EC, 2001/23/EC and 96/71/EC.
- 3) – To achieve a more equal legal treatment of EU seafarers across Member States, putting an end to unjustified exceptions.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No.

## **C. Options**

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

The initiative involves the following policy options (to be adopted individually regarding each one of the Directives):

1. Policy option 1 - No EU action – maintaining the existing exclusion
2. Policy option 2 – amendment of the existing legislation, maintaining the exclusion of seafaring workers from its scope and introducing a legal requirement of guaranteeing the same level of protection by means of national legal provisions.
3. Policy option 3 – suppression of the exclusion, extending the general scope of application of the relevant directive to the population previously covered by the exclusion.
4. Policy option 4 – specific legislation or specific provisions within existing legislation.

Should any of the options 2 to 4 become necessary it will be carried out via a Directive of the European Parliament and the Council. The use of a single amending instrument will be preferred.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The initiative constitutes one of the actions within the scope of Integrated Maritime Policy (vide COM(2007) 575 final and SEC(2007) 1278).

Due to its sectoral nature it is linked with policy areas covered by DG MOVE and DG MARE.

Explain how the options respect the proportionality principle

The principle of proportionality justifies exceptional measures, such as the existing exclusions of seagoing workers from the scope of application of some of the instruments of EU social law, only in cases when they are appropriate, necessary and the disadvantage caused by their existence is outweighed by the advantages (vide ECJ in *Agrarproduktion Staebelow* – C-504/04 and/or *Mangold* – C-144/04).

The aim of the present action is to verify which existing exclusions or suppressions can be justified by the principle of proportionality.

If specific legislation is proposed, the proportionality test will be undertaken on a case-by-case basis.

As a consequence, the principle of proportionality is respected and applied.

#### **D. Initial assessment of impacts**

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

From the **economic** point of view, the inclusion of seagoing workers within the scope of EU law instruments from which they are currently excluded (either within the general regulation or through a set of specific regulations for the sector) would contribute to enhance the overall attractiveness of the sector, bringing more EU workers into it. This will remedy the shortage of European seafarers from which the industry is suffering in the last years. On the other hand, consideration should be given to the added costs, namely administrative costs, that such inclusion might represent for maritime companies, subject to an intense competition in the global market. Therefore, the effect of any legal changes

on the sector's competitive position should be assessed. Special consideration should be given to the current economic situation of the maritime and fishing sectors.

From the **social** point of view the inclusion of seafarers in the scope of the labour law directives would contribute to improve the working conditions of seagoing workers, including on aspects related to information and consultation. The quality of social dialogue in the sector could therefore be significantly enhanced.

A major direct **environmental** impact of the initiative is not apparent. However, this aspect deserves further investigation.

The choice of option shall be done on a directive-by-directive basis.

Further evidence of impact will be provided in the study undertaken by an external expert.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The action pursues the suppression of those exclusions which do not appear as justified anymore. By definition it involves a simplification as it contributes to creation of a wider and more uniform scope of application of the existing legislation. It also would put an end to the unequal legal treatment of seafarers among Member States.

The action may potentially impose additional procedural requirements on employers falling within its scope of application. It will be assessed whether the cost of compliance in the maritime sector is higher than the comparative cost in other sectors currently not excluded from the scope of each relevant directive (proportionality)

The action does not appear to have direct impact on relations with third countries.

## **E. Planning of further impact assessment work**

When will the impact assessment work start?

Ongoing. The draft final report of a study by an external expert is being discussed.

The aim of the study is to contribute with empirical evidence towards the impact assessment to be prepared by the Commission.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Currently some information exists on "Employment trends in all sectors related to the sea or using sea resources" (ECORYS – 2006 – DG FISH). It confirms the need to undertake the present initiative in order to make the sector more attractive for potential European jobseekers.

Part of information concerning the implementation of labour law directives in the MS also exists (HEC-LABOUR ASOCIADOS study – 2007 – DG EMPL).

The results of the study launched in the context of the impact assessment concerning European Works Councils (SEC(2008)2166, accompanying the recasting proposal –(COM (2008) 419) will also be taken into account.

In order to prepare the impact assessment, the Commission needs additional input to its own resources and work, notably in assessing the operating costs for business, the administrative costs, the environmental dimension and the social impact. The reassessment of exclusions and/or derogations applicable to maritime sectors should also take into account their impact on the competitiveness of the EU seafaring industry and the interaction of the EU legislation with international standards applicable to the sector.

This information is being gathered by an external expert (contract VT/2008/42).

Which stakeholders & experts have been/will be consulted, how and at what stage?
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Green Paper "Towards a future maritime policy for the Union" made reference to the exclusions applicable to seafaring workers in a broader context of an open consultation about the future maritime policy.

Communication entitled "Reassessing the regulatory social framework for more and better seafaring jobs in the EU" launched a first phase consultation of the social partners (maritime transport and fisheries Committees) provided for in Article 138(2) of the Treaty (10 October 2007): ETF, ECSA, Europêche and Cogeca.

On 14 April 2009 the Commission launched a second stage consultation of the same social partners (C/2009/2211), which was finalised in December 2009.