



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title

**DG EMPL - Impact Assessment for the inclusion of seafaring workers in the EU labour law Directives
(draft version of 22 May 2012)**

(A) Context

The EU labour law Directives are generally applicable to all sectors of activity and all categories of workers; however seafarers are currently excluded or can be excluded from the scope of the following six Directives: Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer; Directive 2009/38/EC on the establishment of European Works Council; Directive 2002/14/EC establishing a general framework for informing and consulting employees; Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies; Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings and Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This impact assessment examines the continued justification of these exclusions.

(B) Overall assessment

The report needs to be refocused and simplified to better inform decision making. First of all, it should clarify that the main issue at stake is the incompatibility of the existing exclusions of seafarers from the EU labour law Directives with the EU Charter of Fundamental rights. It should then better present and demonstrate the negative effects of the current situation on fundamental rights of seafarers, clearly separating these from secondary issues, such as the unattractiveness of maritime careers for EU citizens. On the basis of a refocused problem definition, the report should present corresponding specific objectives. It should then define the envisaged specific rules in detail upfront, possibly including alternative sub-options. The report should also better assess positive as well as negative impacts, including impacts on sector competitiveness/risk of flagging-out, SMEs/micro-enterprises and individual Member States. To better demonstrate the proportionality of the foreseen measures, it should present a clear overview of the overall costs imposed on the industry. Finally, clear operational and proportionate monitoring and evaluation arrangements should be presented.

(C) Main recommendations for improvements

(1) Improve and refocus the problem definition. The report should clarify that the main problem at stake is the incompatibility of the existing Directives with the Charter of Fundamental Rights of the European Union. On this basis, it should better explain and substantiate the negative implications of the exclusions on seafarers, while clearly separating these from secondary issues, such as the unattractiveness of maritime careers for EU citizens. When analysing the reasons for exclusions, the report should describe in detail the specificities of the fishing and merchant navy sectors and should better explore the likely reasons why Member States excluded the seafarers from the Directives. In doing so, it should analyse the divergent employment models/contractual arrangements across Member States and indicate if the different positions of Member States might have changed in the meantime. Finally, in view of the rather inconclusive evidence related to the overall unattractiveness of maritime careers for EU citizens, the report should more accurately explain the relevance, scope and main drivers of this secondary issue.

(2) Strengthen the intervention logic and better present the options. The report should define policy objectives that better correspond to the refocused and better substantiated problem(s). In doing so, it should clearly prioritise those (specific) objectives that relate to the fundamental rights issues and that can be directly and adequately addressed within the context of this initiative. The report should then define upfront the envisaged specific rules in more concrete terms, possibly with different sub-options, and explain if and how the different views of Member States and stakeholders were taken into account. The reasons for discarding option F (i.e. suppression of exclusions for fisheries only) should be better explained.

(3) Better present and compare impacts. In order to better demonstrate the proportionality of the policy options, the report should better present and justify positive as well as negative impacts, and where relevant, it should distinguish between impacts on the fishing and the merchant navy sectors. The benefits (i.e. to what extent the protection of fundamental rights would improve) as well as the costs should be assessed in greater detail, particularly for the Transfer of Undertakings and Collective Redundancies Directives. Importantly, the report should provide a comprehensive and clear overview of the overall costs imposed by the set of foreseen measures on the fishing and merchant sectors. On this basis, it should better assess the overall impact on sector competitiveness (including the risk of flagging-out), SMEs/micro-enterprises, high-skilled workers in the sector, most affected Member States as well as national authorities (in relation to the implementation of new rules).

(4) Clarify the future monitoring and evaluation arrangements. The report should design more operational and time-specific arrangements for monitoring and evaluation, fully corresponding to future decision-making needs. In doing so, it should present concrete and robust monitoring indicators (including in relation to infringement cases) and inform about the related costs.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should clarify if all affected stakeholders (including the most affected Member States) could express their views on the analysed options and specific measures. It should better reflect their (different) views throughout the report, particularly in the problem definition and the policy option sections. The report should add to the context section a short description of the market, including main players, presence of EU nationals over the total number of workers and trends in working conditions both in the EU and in third countries. A glossary should be added as well as an overview table showing fundamental rights addressed by this initiative and their relevance for the six Directives and the Maritime Labour Convention. Finally, the accuracy of the cost calculations should be revisited and ranges of estimates should be provided.

(E) IAB scrutiny process

Reference number	2008/EMPL/014
External expertise used	No
Date of IAB meeting	20 June 2012