

**Commission 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**

ECSA/ETF COMPROMISE AGREEMENT

1. INTRODUCTION

The following table provides an overview of the relevant articles with regard to seafarers in the above-mentioned Directives, in the Commission's proposal for amendments and consists of details of the compromise proposals reached by ECSA and ETF under the auspices of the EU Sectoral Social Dialogue Committee for Maritime Transport.

This compromise agreement is a delicate balance between the interests of ECSA and ETF members and hence is considered by both organisations as an agreement that they invite the Council of Ministers and the European Parliament to endorse.

2. SPECIFIC ARTICLES AND DIRECTIVES

Current Directive / articles	EC Proposal	Joint ECSA/ETF Proposal
<p>Employer Insolvency Directive 2008/94/EC</p>		
<p>Article 1 (2)</p>		
<p>‘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.’</p>	<p>The Commission has not proposed any change to this article. Hence, it would remain the same.</p>	<p>ECSA and ETF note that this Directive already covers seafarers.</p> <p>However, the Commission has identified some Member States that do not seem to apply this Directive correctly to seafarers. As such:-</p> <p>Both ECSA and ETF call on these Member States to take action as necessary.</p>

Article 1(3)		
<p>‘Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive:</p> <p>(a) domestic servants employed by a natural person;</p> <p>(b) share-fishermen.’</p>	<p>The Commission has proposed the following amendment to Article 1 (3) of Directive 2008/94/EC:</p> <p>‘Article 1(3) is replaced by the following:</p> <p>‘3. Where such provision already applies in their national legislation, Member States may continue to exclude domestic servants employed by a natural person from the scope of this Directive.’</p>	<p>ECSA and ETF note that this Directive already covers seafarers.</p> <p>However, the Commission has identified some Member States that do not seem to apply this Directive correctly to seafarers. As such:-</p> <p>Both ECSA and ETF call on these Member States to take action as necessary.</p>
<p>European Works Council Directive 2009/38/EC</p>		
Article 1(7)		
<p>‘Member States may provide that this Directive shall not apply to merchant navy crews.’</p>	<p>The Commission has proposed the following amendment to Article 1 paragraph 7 of Directive 2009/38/EC:</p>	<p>The following compromise amendment is proposed:</p>

	<p>'Directive 2009/38/EC is amended as follows:</p> <p>In Article 1, paragraph 7 is deleted.'</p>	<p>Article 1 paragraph 7 is deleted.</p> <p>Article 10 - insert new paragraph 5:</p> <p>“A member of a special negotiating body or European Works Council or his alternate who is a member of the crew of a seagoing vessel shall be entitled to participate in a meeting of the special negotiating body or European Works Council or any other meeting within any procedures established under Article 6(3) if s/he is not at sea or in a port in a country other than that in which the shipping company is domiciled when the meeting is taking place.</p> <p>Meetings shall, wherever practicable, be scheduled to facilitate the participation of members who are members of the crews of seagoing vessels.</p>

<p>Information and Consultation Directive 2002/14/EC</p>		
<p>Article 3(3)</p>		
<p>‘Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas.’</p>	<p>The Commission has proposed the following amendment to Article 3 (3) of Directive 2002/14/EC:</p> <p>‘Directive 2002/14/EC is amended as follows:</p> <p>Article 3(3) is replaced by the following:</p> <p>‘3. Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas, provided that such particular provisions guarantee an equivalent level of protection of the right to information and consultation and its effective exercise by the employees concerned.’</p>	<p>The following compromise amendment is proposed:</p> <p>“Article 3 (3) to be deleted.”</p> <p>The statement accompanying the proposal to read as follows:</p> <p>ECSA/ETF agrees to Article 3(3) being deleted on the understanding that it is recognised that information and consultation of members of crews of vessels may be conducted remotely via electronic means of communication.</p>

Collective Redundancies Directive 98/59/EC		
Article 1(2)(c)		
‘This Directive shall not apply to: ... (c) the crews of seagoing vessels.’	<p>The Commission has proposed the following amendment to Article 1(2)(c) of Directive 98/59/EC</p> <p>‘Directive 98/59/EC is amended as follows:</p> <p>(1) Article 1 is amended as follows:</p> <p>(a) In paragraph 1, the following point (c) is added:</p> <p>‘(c) ‘transfer’ is interpreted in the meaning of Directive 2001/23/EC’ [Transfer of Undertakings].</p>	<p>The following compromise amendment is proposed:</p> <p>“Proposal to amend Article 1 and addition of paragraph 1 (c) is deleted as no longer required.</p>

	<p>(b) In Article 1(2), point (c) is deleted.</p> <p>(2) In Article 3(1), a new second subparagraph is inserted:</p> <p>‘When the projected collective redundancy concerns members of the crew of a seagoing vessel, the notification shall be made to the competent authority of the State of the flag which the vessel flies.’</p> <p>(3) In Article 4, the following paragraph 1a is inserted:</p> <p>‘1a. When projected collective redundancies of members of a crew, are carried out in connection with or deriving from a transfer of a seagoing vessel, Member States may, after consulting the social partners, grant the competent public authority the power to derogate, in full or in part, from the period</p>	<p>In Article 1(2), point (c) is deleted.</p> <p>In Article 3(1), a new second subparagraph is inserted:</p> <p>“When the projected collective redundancy concerns members of the crew of a seagoing vessel, the notification shall be made to the competent authority of the State of the flag which the vessel flies.”</p> <p>In Article 4, new paragraph 1a as proposed by the Commission is deleted.</p>
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	<p>provided for in paragraph 1 in the following circumstances:</p> <p>(a) the object of the transfer consists exclusively of one or more seagoing vessels,</p> <p>(b) the employer only operates one seagoing vessel.'</p>	
<p>Transfer of Undertakings Directive 2001/23/EC</p>		
<p>Article 1(3)</p>		
<p>'This Directive shall not apply to seagoing vessels.'</p>	<p>The Commission has proposed the following amendment to Article 1(3) of Directive 2001/23/EC:</p> <p>'Directive 2001/23/EC is amended as follows:</p> <p>Article 1 is amended as follows:</p>	<p>The following compromise amendment is proposed:</p> <p>Article 1 is amended as follows:</p>

	<p>(1) 'Paragraph 2 is replaced by the following:</p> <p>'2. This Directive shall apply, without prejudice to paragraph 3, where and insofar as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty.'</p> <p>(2) Paragraph 3 is replaced by the following:</p> <p>'3*. This Directive shall apply to the transfer of a seagoing vessel registered in and/or flying the flag of a Member State and constituting an undertaking, business or part of an undertaking or business for the purposes of this Directive, even when it is not situated within the territorial scope of the Treaty.'</p>	<p>(1) 'Paragraph 2 is replaced by the following:</p> <p>'2. This Directive shall apply where and insofar as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty.'</p> <p>(2) 'Paragraph 3 is replaced by the following:</p> <p>'(3) This Directive shall apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business, or part of an undertaking or business within the meaning of paragraphs 1 and 2, provided that the transferee is situated, or the transferred undertaking, business, or part of an undertaking or business remains within the territorial scope of the Treaty.</p> <p>This Directive shall not apply if the object of the transfer consists exclusively of one or more seagoing vessels'</p>
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	<p>(3) The following paragraph 4 is added:</p> <p>‘4. Member States may, after consulting the social partners, provide that Chapter II of this Directive does not apply in the following circumstances:</p> <p>(a) the object of the transfer consists exclusively of one or more seagoing vessels,</p> <p>(b) the undertaking or business to be transferred operates only one seagoing vessel.’</p>	<p>Paragraph 4 as proposed by the Commission is deleted.</p>
	<p>Article 6</p>	
	<p>‘The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the general level of protection of persons covered by this Directive, already afforded by the Member States in the fields covered by Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and/or 2001/23/EC.’</p>	<p>The compromise amendment endorses Article 6 as proposed by the Commission.</p>

	Article 8	
	<p>'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than <u>5 years</u> after the date of entry into force of this Directive. The Member States shall immediately communicate to the Commission the text of those provisions.'</p>	<p>The following compromise amendment is proposed:</p> <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than <u>24 months</u> after the date of entry into force of this Directive. The Member States shall immediately communicate to the Commission the text of those provisions.'</p>