


Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) 2012/0062(COD) Directive		Procedure completed	
Port State control: aligning the Directive to the Maritime Labour Convention requirements Amending Directive 2009/16/EC 2005/0238(COD) See also 2012/0065(COD)			
Subject 3.20.03.01 Maritime safety 3.20.15.06 Maritime or inland transport agreements and cooperation 4.15.04 Workforce, occupational mobility, job conversion, working conditions 4.15.15 Health and safety at work, occupational medicine			
Key players			
European Parliament	Committee responsible TRAN Transport and Tourism	Rapporteur S&D SIMPSON Brian Shadow rapporteur PPE KOUMOUSAKOS Georgios ALDE MEISSNER Gesine Verts/ALE TAYLOR Keith ECR ROSBACH Anna	Appointed 23/04/2012
	Committee for opinion EMPL Employment and Social Affairs	Rapporteur for opinion The committee decided not to give an opinion.	Appointed
Council of the European Union	Council configuration Transport, Telecommunications and Energy	Meeting 3196	Date 29/10/2012
	Transport, Telecommunications and Energy	3171	07/06/2012
European Commission	Commission DG Mobility and Transport	Commissioner KALLAS Siim	
European Economic and Social Committee European Committee of the Regions			
Key events			
23/03/2012	Legislative proposal published	COM(2012)0129	Summary

29/03/2012	Committee referral announced in Parliament, 1st reading		
07/06/2012	Debate in Council	3171	Summary
29/10/2012	Debate in Council	3196	
27/11/2012	Vote in committee, 1st reading		
23/01/2013	Committee report tabled for plenary, 1st reading	A7-0394/2012	
01/07/2013	Debate in Parliament		
02/07/2013	Results of vote in Parliament		
02/07/2013	Decision by Parliament, 1st reading	T7-0294/2013	Summary
22/07/2013	Act adopted by Council after Parliament's 1st reading		
12/08/2013	Final act signed		
12/08/2013	End of procedure in Parliament		
14/08/2013	Final act published in Official Journal		

Technical information

Procedure reference	2012/0062(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2009/16/EC 2005/0238(COD) See also 2012/0065(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 100-p2
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/7/09186

Documentation gateway

Legislative proposal	COM(2012)0129	23/03/2012	EC	Summary
Economic and Social Committee: opinion, report	CES1600/2012	11/07/2012	ESC	
Committee draft report	PE494.856	17/09/2012	EP	
Amendments tabled in committee	PE498.063	23/10/2012	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0394/2012	23/01/2013	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0294/2013	02/07/2013	EP	Summary

Draft final act	00024/2013/LEX	12/08/2013	CSL
Commission response to text adopted in plenary	SP(2013)625	24/09/2013	EC

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2013/38](#)

[OJ L 218 14.08.2013, p. 0001](#) Summary

Final legislative act with provisions for delegated acts

Port State control: aligning the Directive to the Maritime Labour Convention requirements

PURPOSE: to amend Directive 2009/16/EC on port State control in order to align it to the requirements of the Maritime Labour Convention adopted in 2006.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: on 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention (MLC), desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

The MLC, adopted in 2006, provides comprehensive rights and protection at work for all seafarers regardless of their nationality and the flag of the ship. It aims to both achieve decent working conditions for seafarers and secure fair competition for quality shipowners. It sets out seafarers' rights to decent conditions of work on a wide range of subjects, and has been designed to be globally applicable, easily understandable, updatable and uniformly enforced. [Council Decision 2007/431/EC](#) has authorised the Member States to ratify the Convention. Member States should ratify it as soon as possible.

Port State control is regulated at EU level by [Directive 2009/16/EC](#), which aims at helping to drastically reduce substandard shipping. In addition, Directive 2009/13/EC implements certain standards of the MLC within Union law.

While Directive 2009/16/EC already refers to the MLC and to ILO standards, it needs to be updated to take into account the new documents and arrangements brought in by the MLC.

This initiative is part of the EU policy on the maritime professions. It follows from the [Communication entitled Strategic goals and recommendations for the EU's maritime transport policy until 2018](#), and the [White Paper on the Roadmap to a Single European Transport Area Towards a competitive and resource efficient transport system](#), which highlights the importance of a social agenda for the maritime transport.

The proposal is closely linked to the [proposal for a directive](#) concerning the flag State responsibilities for the enforcement of Directive 2009/13/EC.

IMPACT ASSESSMENT: a full public consultation offered an opportunity for Member States and stakeholders to express their views in June 2011. There was a general consensus on the need for updating the legislation related to flag State and port State in order to enforce the MLC requirements. The specific positive effects which were underlined consisted of reinforcing maritime safety, improving quality shipping, making the conditions of competition fairer between EU and non EU operators and between EU and non EU flags. Stakeholders also mentioned the better job quality for all seafarers.

LEGAL BASIS: Article 100(2) TFEU.

CONTENT : the proposal aims to amend the port State control Directive in order to:

- include the maritime labour certificate and the declaration of maritime labour compliance among the documents to be checked by inspectors;
- extend the scope of inspections to new items (for ex, the existence of an adequate labour contract signed by both parties for each seafarer with the required clauses in the contract);
- extend the scope of investigation in case of complaints and provide the adequate procedure.

Further to Joint Political Declarations, the Commission is now considering the need for explanatory documents on a case by case basis.

By virtue of the principle of proportionality, explanatory documents have not been deemed justified in the present proposal since it modifies only a limited number of legal obligations of an existing directive. Thus, the proposal does not include the recital on explanatory documents.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Port State control: aligning the Directive to the Maritime Labour Convention requirements

The Council took note of the state of play on two proposals for directives laying down the [responsibilities of flag states](#), on the one hand, and port states, on the other, as regards the enforcement of the Maritime Labour Convention adopted in 2006 by the International Labour Organisation (ILO).

The Council's preparatory bodies have only recently started discussion of the Commission proposals. The progress report drawn up by the presidency shows that member states generally welcomed the proposals, although concerns were expressed regarding :

- the absence of impact assessments,
- the necessity to avoid putting additional administrative burdens on public administrations and the shipping industry at this time of economic crisis;
- the need to bring the text of the draft Directives more in line with MLC 2006 by incorporating, in certain instances, its exact wording.

Some delegations took the floor to highlight certain issues mentioned in the progress report.

In respect of the port state proposal, there was felt to be a need for clarification as regards the situation of member states that have not ratified the Maritime Labour Convention, and the introduction of a clause intended to prevent any reduction in the level of workers' social protection as a result of the application of the directive. Another issue of concern is the possibility of subjecting ships under the flag of a state that has not ratified a set of conventions to further inspections at any time, in addition to the regular inspections. The Commission has undertaken to further explain how this inspection regime would function and its possible impact. While waiting for this analysis, the Presidency has chosen not to suggest a revision or deletion of this provision, despite the strong opposition from delegations.

Another question of general concern is the relation between the definitions of "crew" and "company" in the port State control Directive and the slightly different definitions of "seafarer" and "shipowner" in MLC 2006, respectively. The Presidency has tried to solve the first question through the insertion of an interpretative recital and will work further towards an appropriate solution for the second question.

The Commission proposes to introduce a so-called "non-regression clause". However, several delegations find this provision too broad and unclear (in particular the general reference to "Union social legislation"). The Presidency will look further into possible ways of clarifying this provision.

Many delegations have expressed concerns on the wording of those provisions, which they believe are describing the implementing measures in a too detailed manner. The risk is, they argue, that Member States will face more detailed rules (e.g. binding "check-lists") leading to additional administrative burdens. They are asking for wording which is closer to the more general terms of the current port State control Directive.

As for the provision on delegated acts, giving the Commission the possibility to update the list of instructions adopted by the Paris Memorandum of Understanding on Port State Control (Article 15 and Annex VI of the current Directive), some delegations have voiced strong concerns. It should be noted that the Commission has a reservation on all changes to the provisions on implementing and delegated acts.

As regards the procedure for handling complaints related to MLC 2006, several delegations have asked for wording which is closer to that of MLC 2006. Similar requests have been made as far as provisions regarding rectification and detention is concerned.

Ministers instructed the Council's preparatory bodies to continue examination of the proposals.

Port State control: aligning the Directive to the Maritime Labour Convention requirements

The Committee on Transport and Tourism adopted the report by Brian SIMPSON (S&D, UK) on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control.

The committee recommends that the European Parliaments position adopted at first reading, under the ordinary legislative procedure, should amend the Commission proposal as follows:

Application of the Directive: Members aim to clarify that minimum international standards do not provide any reason to undermine existing European standards when those are higher. Other proposed amendments seek to align the text of the Port State Control Directive more closely with that of the Maritime Labour Convention (MLC), 2006.

Inspections: Members consider that it is necessary to take account of the recommendations drawn up under the Paris Memorandum of Understanding, by following the recommendations set out in the detailed guidelines for inspectors carrying out inspections under the MLC.

Non-conformity with the requirements of the Convention: Member propose a separate Article making clear that action should be taken whenever cases of non conformity with MLC requirements are identified, irrespective of whether these originate from a complaint.

Complaints: the amendments aim to strengthen clauses concerning the confidentiality of complaints so as to reduce the risk that seafarers may feel inhibited about lodging complaints for fear of subsequently suffering adverse consequences. The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned.

The amendments stipulate that a complaint by a seafarer alleging a breach of the requirements of the Convention (including seafarers rights) may be reported to an inspector in the port at which the seafarers ship has called. In such cases, the inspector shall undertake an initial investigation followed by a more detailed investigation if necessary.

The inspector shall, where appropriate, seek to promote a resolution of the complaint at ship-board level.

Where a complaint has not been resolved following action taken in accordance with the Directive, the port State shall transmit a copy of the inspectors report to the Director-General of the International Labour Organisation. Statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Organisation.

Suppression of deficiencies and detainment of ships : the amended text states that in the case of deficiencies which are clearly hazardous to

safety, health, the environment or the security of seafarers, or where there is non-conformity which constitutes a serious or repeated breach of the requirements of the Convention (including seafarers rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped.

If the ship is prevented from sailing, the inspector shall immediately notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline.

Transposition: Members propose reducing from 12 months to one month the transposition period so that the Member States will be able to comply fully with the Directive on the date the Convention enters into force.

Delegated acts: the proposed amendments on this issue reflect Parliaments usual position that delegation should not be for an indefinite period but for a period of five years from

the date of entry into force of this Directive and that the Commission should report on how it has used its powers before an extension is considered.

Port State control: aligning the Directive to the Maritime Labour Convention requirements

The European Parliament adopted by 679 votes to 20, with 13 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the proposal as follows:

Application of the Directive: the amendments seek to align the text of the Port State Control Directive more closely with that of the Maritime Labour Convention (MLC), 2006, adopted by the International Labour Organisation (ILO) in Geneva on 23 February 2006.

The amended Directive also makes reference to: (i) the International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS 2001); (ii) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001).

Level of protection under social law: according to the amended text, measures adopted to give effect to this Directive shall not lead to a reduction in the general level of protection of seafarers under Union social law in the areas to which this Directive applies.

In implementing those measures, if the competent authority of the port State becomes aware of a clear violation of Union law on board ships flying the flag of a Member State, it shall, in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.

Inspections: Member States, when inspecting a ship flying the flag of a State which is not a party to a Convention, shall ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris Memorandum of Understanding (MOU) on port State control signed in Paris on 26 January 1982.

Report to the master of the ship: where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of MLC 2006, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

Complaints: the amendments strengthen the clauses regarding the confidentiality of complaints so as to reduce the risk that seafarers may feel inhibited about lodging complaints for fear of subsequently suffering adverse consequences. The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned.

The text stipulates that a complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation and may also conduct a more detailed inspection. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

Where the complaint has not been resolved following action taken in accordance with the Directive, the port State shall transmit a copy of the inspector's report to the Director-General of the International Labour Office. The appropriate seafarers' and shipowners' organisations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Suppression of deficiencies and detention of ships: in the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of MLC 2006 requirements (including seafarers' rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped. The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner.

In the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary.

Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of MLC 2006 (including seafarers' rights), the competent authority shall forthwith notify the flag State accordingly.

Implementation: when establishing the implementing rules, the Commission shall take specific care that those rules take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Paris MOU.

Port State control: aligning the Directive to the Maritime Labour Convention requirements

PURPOSE: to amend Directive 2009/16/EC on port State control in order to align it to the requirements of the Maritime Labour Convention adopted in 2006.

LEGISLATIVE ACT: Directive 2013/38/EU of the European Parliament and of the Council amending Directive 2009/16/EC on port State control.

CONTENT: the Directive defines the responsibilities of States performing port State control obligations in respect of the implementation of the Maritime Labour Convention adopted in 2006 by the International Labour Organisation (ILO).

On 23 February 2006, the International Labour Organisation (ILO) adopted the Maritime Labour Convention, 2006 (MLC 2006), desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

MLC 2006 sets out maritime labour standards for all seafarers regardless of their nationality and of the flag of the ships on which they serve.

The main amendments made to Directive 2009/16/EC concern in particular:

- The inclusion of new documents to be checked, namely the "maritime labour certificate" and the "declaration of maritime labour compliance".
- The extension of inspections to cover other requirements of the Maritime Labour Convention. The text states that when inspecting a ship flying the flag of a State which is not a party to a Convention, Member States must ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982 (Paris MOU).
- Handling of complaints: a complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers rights) may be reported to an inspector in the port at which the seafarers ship has called. In such cases, the inspector shall undertake an initial investigation. The directive strengthens the clauses on the confidentiality of complaints so as to reduce the risk that seafarers may feel inhibited about lodging complaints for fear of subsequently suffering adverse consequences. The identity of the complainant must not be revealed to the master or the shipowner of the ship concerned.
- The inclusion of a serious or repeated breach of the Maritime Labour Convention as a reason detaining a ship: the detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies.

The measures adopted to give effect to the Directive must under no circumstances constitute grounds justifying a reduction by Member States in the general level of protection of seafarers on board ships flying the flag of a Member State under the applicable Union social law.

ENTRY INTO FORCE: 20/08/2013, the date of entry into force of the MLC 2006.

TRANSPOSITION: 21/11/2014.

DELEGATED ACTS: the Commission may adopt delegated acts in order to allow the Commission to update the relevant procedures swiftly. The power to adopt delegated acts is conferred on the Commission for a period of five years (renewable) from 20 August 2013. The European Parliament or Council may object to a delegated act within a period of two months from the date of notification (this period may be extended by two months). If either Parliament or council express objections, the delegated act will not enter into force.