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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**

(with EEA relevance)

{ SWD(2013) 461 final }

{ SWD(2013) 462 final }

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The EU labour law directives are generally applicable to all sectors of activity and all categories of workers. Nevertheless, seafarers are excluded or can be excluded from the scope of six directives, without any express justification. The directives concerned are the following:

- Directive 2008/94/EC¹ relating to the protection of employees in the event of the insolvency of their employer (hereafter referred to as ‘the Employer Insolvency Directive’);
- Directive 2009/38/EC² on the establishment of European Works Council (hereafter referred to as the ‘European Works Council Directive’);
- Directive 2002/14/EC³ establishing a general framework for informing and consulting employees (hereafter referred to as the ‘Information and Consultation Directive’);
- Directive 98/59/EC⁴ on the approximation of the laws of the Member States relating to collective redundancies (hereafter referred to as the ‘Collective Redundancies Directive’);
- Directive 2001/23/EC⁵ relating to the safeguarding of employees’ rights in the event of transfers of undertakings (hereafter referred to as the ‘Transfer of Undertakings Directive’);
- Directive 96/71/EC⁶ concerning the posting of workers in the framework of the provision of services (hereafter referred to as the ‘Posting of Workers Directive’).

Depending on the situation at national level, exclusions could have a negative impact on a number of rights recognised under the Charter of Fundamental Rights of the

¹ Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version), OJ L 283, 28.10.2008, p. 36.

² Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), OJ L 122, 16.5.2009, p. 28. This Directive repeals and replaces Directive 94/45/EC (OJ L 254, 30.9.1994, p. 64), as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22) and Directive 2006/109/EC (OJ L 363, 20.12.2006, p. 416).

³ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

⁴ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.8.1998, p. 16.

⁵ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16.

⁶ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21/01/1997, p. 1.

European Union, in particular the right to information and consultation within the undertaking (Article 27), and the right to fair and just working conditions (Article 31).

Most of the Member States have made little or no use of the exclusions. Eight Member States⁷ have not excluded seafarers from any of the Directives and eight Member States have made use of only one exclusion. This situation gives rise to a potential situation whereby the same categories of workers are treated differently in the different Member States.

Furthermore, as underlined by the Commission previously, the number of EU national seafarers is steadily decreasing and this could be problematic for the future, notably because experience off-shore is essential for certain shore-based jobs. Although this could be the consequence of different factors, the lack of interest in maritime careers may be reinforced by the impression that seafarers are less well protected than other employees⁸.

Hence, the current situation does not ensure a level playing field in the European market, since certain companies are exempted from certain obligations, notably in terms of information and consultation, which are mandatory for competing companies based in other Member States.

As a consequence, the aim of the proposal is to improve the level of protection of the rights protected under the EU Charter of Fundamental Rights in EU labour law and to ensure a level playing field at EU level. Furthermore, it contributes to general policy objectives which are enshrined in Article 151 TFEU, namely the promotion of employment, improved living and working conditions, proper social protection and dialogue between management and labour.

1.1. Consistency with other EU policies and horizontal objectives

This initiative aims at assessing the scope and reasons for the exclusion or faculty to exclude seafarers from labour law directives. The Commission is committed to ensuring the compatibility of any new legislative proposal with the EU Charter of Fundamental Rights and to assess the impact of all such proposals on the rights and principles protected under the Charter. In the case at stake, suppressing the exclusions would have a positive impact on the rights protected under Articles 27 and 31 of the Charter.

It is also fully in line with the Integrated Maritime Policy for the European Union established in 2007 through the so-called 'Blue Book'⁹. In the 'Blue Book' the Commission insisted on its aim 'to increase the number and quality of *maritime jobs* for European citizens', stressing in particular that:

⁷ AT, BG, CZ, ES, FR, PL, SE, SI.

⁸ See, among others, the Communication 'An Integrated Maritime Policy for the European Union'(COM(2007) 575 final of 10 October 2007) and the Report of the Task Force on Maritime Employment.

⁹ Document COM(2007) 575 final of 10 October 2007.

‘Improved staffing policies and working conditions (including health and safety), supported by a concerted effort by all maritime stakeholders and an efficient regulatory framework taking into account its global context, are necessary if Europeans are to be attracted to the sector.’

The Commission stated that in order to meet the objective it would ‘reassess, in close cooperation with social partners, the exclusions affecting maritime sectors in EU labour legislation’.

The Commission reaffirmed its objective to increase the number and quality of jobs in the maritime sector in its Communication on ‘Blue Growth’¹⁰ which was endorsed by the European Ministers responsible for the Integrated Maritime Policy in the Limassol Declaration ¹¹.

This proposal is also in line with the EU 2020 Strategy and its goals, notably in terms of employment. Improving the quality of work and working conditions, and in particular reviewing the existing legislation and providing for a smarter EU legal framework for employment and health and safety at work, constitute key actions within the context of ‘An Agenda for new skills and jobs: A European contribution towards full employment’¹².

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultations of stakeholders

This proposal was preceded by a number of consultations, both specific and general. The Commission has also used external expertise for the preparation of this initiative.

General

In the context of the setting up of an integrated maritime policy, the issue of labour law exclusions was addressed in the 2006 Green Paper¹³. In its 2007 Communication¹⁴, the Commission drew some conclusions from the consultation launched with the Green Paper. On the issue of jobs in the maritime sector, it stated that ‘there are divergences on whether, and which, exclusions concerning maritime sectors in EU social legislation are justified, but there is agreement on the need to contribute to a global level playing field for the sector and the role that EU legislation can play in this context’.

Specific

¹⁰ See Communication ‘Blue Growth: opportunities for marine and maritime sustainable growth’ (COM/2012/494 final of 13 September 2012).

¹¹ The Limassol Declaration, 7 October 2012.

¹² COM(2010) 682 final of 23 November 2010.

¹³ Document COM(2006) 275 final of 7 June 2006.

¹⁴ Document COM(2007) 574 final of 10 October 2007.

In October 2007, the Commission adopted a Communication¹⁵ launching the first stage of consultation of European social partners as provided for in Article 154 of the Treaty on the Functioning of the European Union (TFEU). It was followed, in April 2009, by the launching of the second stage of consultation of the European social partners.

The consultation showed that the social partners in the maritime transport sector had differing views on the need to do away with the existing exclusions. While the European Transport Workers' Federation (ETF) were in favour of suppressing all exclusions, the European Community Shipowners' Associations (ECSA) considered that the reasons for introducing them, which were linked to the specificities of the maritime transport sector, remained valid and that the exclusions should therefore be maintained.

For their part, both sides in the fisheries sector were in favour of doing away with some of the existing exclusions (Insolvency Directive, Collective Redundancies Directive and Transfer of Undertakings Directive) or the establishment of equivalent specific provisions, particularly regarding information and consultation. They did not take a position regarding the European Works Councils Directive.

A detailed questionnaire was sent to all Member States. Replies were received from 20 Member States¹⁶. The information received is detailed in Annex 3 of the Impact Assessment report.

In summary, it should be underlined that Member States that have opted to apply the provisions of the Directives to seafarers are unanimous that they do not appear to represent significant additional costs compared to their application to on-shore companies. None of these Member States, notably some Member States with an important maritime sector, is aware of any negative impact, particularly in the event of the sale of a vessel. On the contrary, the experience of some maritime nations which do not apply the exclusions has been an increase in the fleet, while the fleets of Member States that applied the exclusions decreased.

Member States having made use of the exclusions and derogations unanimously argue that they should be maintained and that the application of the Directives to the maritime sector would have significant additional costs. The Member States in question do not give any indication of the quantification of the additional costs.

External expertise

The Task Force on maritime employment and competitiveness, established by the European Commission in the context of the integrated maritime policy, delivered its report in July 2011¹⁷. On the issue of the exclusion of seafarers from certain labour law Directives, the Task Force stated:

'Important evolutions have occurred since the provisions were adopted, notably as regards communications technology, which might now make information and

¹⁵ Document COM(2007) 591 final of 10 October 2007.

¹⁶ AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, LT, LV, MT, PL, PT, RO, SE, SI and UK.

¹⁷ <http://ec.europa.eu/transport/modes/maritime/seafarers/doc/2011-06-09-tfmec.pdf>.

consultation requirements more practical. Elimination of the exclusions or the application of requirements adapted to the special circumstances of employment at sea would help to eliminate the impression that seafarers are less well protected by European Union labour law than other employees which may contribute to a lack of interest in maritime careers’.

The Commission launched a call for tenders for a study aimed at supporting the preparation of an impact assessment concerning the possible review of the current exclusions of seafaring workers from the scope of EU labour law. The Study was carried out by a consortium led by MRAG Limited. The final report¹⁸ was delivered in December 2010.

2.2. Impact assessments

From the discussions and consultations with stakeholders, the following policy options emerged for impact assessment:

Policy option 1: no EU action

Under this policy option, the EU would take no new initiative, legislative or non-legislative. The current Directives would remain in place as they stand.

Trends indicate that the decline in the number of European seafarers is likely to continue, with more and more jobs aboard European vessels taken up by personnel from third countries.

Policy option 2: derogation subject to the guarantee of an equivalent level of protection

This option would entail replacing the blank exclusions by a provision allowing Member States to deviate from the provisions of the Directive for seafarers, provided that a degree of protection equivalent to that of the Directives and its effective exercise by the employees concerned is ensured.

This option would allow for the adaptation of the legal framework to the specificities of the maritime sector, notably the remoteness of workers from the headquarters of the company for very long periods, but would still require Member States to ensure the substance of the protection, if not the practical modalities of its implementation.

Policy option 3: suppress the exclusions in all Directives

This option would be based on the assumption that all of the Directives were originally intended to include all sectors of activity and that the exclusions of seafarers are unjustified.

Policy option 4: adapt the rules to the specificities of the sector

This option would entail the adoption of substantive norms aimed at adapting the legal texts to the characteristics of the maritime sector. For example, in the maritime

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MRAG, *Preparatory study for an impact assessment concerning a possible revision of the current exclusions of seafaring workers from the scope of EU social legislation*, December 2010.

sector, the buying and selling of vessels is common practice. In this highly competitive market the adoption of norms should not lead to a competitive disadvantage for the EU-based seller of a vessel.

Depending on each particular Directive, it could be necessary to put in place special arrangements concerning the eligibility as workers' representative or the application of general rules to the sale of a vessel.

The ranking of the policy options was made autonomously for each Directive, since the best approach could differ from one Directive to another. Indeed, the preferred option for this initiative would be a combination of the four different policy options, depending on the individual Directive:

- Policy option 3 (suppression of the exclusions) for the Insolvency Directive;
- Policy option 3 (suppression of the exclusions) for the European Works Council Directive;
- Policy option 2 (equivalent level of protection) for the Information and Consultation Directive;
- Policy option 4 (specific provisions) for the Collective Redundancies Directive;
- Policy option 4 (specific provisions) for the Transfer of Undertakings Directive;
- Policy option 1 (no action) for the Posting of Workers Directive.

This proposal is in line with the conclusions of the Impact Assessment report in terms of the ranking of the policy options.

The impact of this initiative on SMEs, essentially small and micro-enterprises, is reduced because most of the Directives already exclude small and micro-enterprises.

3. LEGAL ELEMENTS OF THE PROPOSAL

This proposal introduces amendments to five Directives in force. In particular, it recognises an unconditional right to information and consultation of seagoing workers in all Directives which previously allowed for exceptions and derogations from this right (European Works Councils Directive, Information and Consultation Directive, Collective Redundancies Directive, Transfer of Undertakings Directive).

Procedures for information and consultation of workers contribute to improving corporate governance and to reducing the negative consequences of sudden restructuring. Companies will benefit from better communication of information regarding company strategy and the rationale for certain decisions to employees, particularly in times of change, with no substantial costs to the employer.

It also recognises other rights, taking into account the specificity of the sector (suppression in some specific cases of cooling-off periods in the Collective Redundancies Directive or of the transfer of the employment contract/relationship in the Transfer of Undertakings Directive).

In view of the type of amendments, its sectoral nature and the principle of procedural economy, it is preferable to amend the Directives by means of a single Directive.

Legal basis

This proposal introduces amendments to five existing Directives: Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC. Three of these Directives were adopted with Article 153 TFEU (former Article 137 EC) as legal basis: 2009/38/EC, 2002/14/EC and 2008/94/EC. The legal bases of Directives 98/59/EC and 2001/23/EC were respectively Articles 100 EC and 94 EC, i.e., equivalent to the current Article 115 TFEU.

Despite the different legal bases of the Directives to be amended, having regard to their content, it is clear that they all serve to support and complement Member States' activities in the fields enumerated in Article 153(1) TFEU, in order to further the social policy objectives of the Union.

Article 153(2) TFEU is therefore the adequate legal basis for a single proposal amending the abovementioned five Directives.

Subsidiarity and proportionality

This exercise concerns the review of five Directives. As such, this can only be done at the level of the EU, by a Directive or a series of Directives amending the existing acts.

This initiative covers a sector subject to strong international competition, with a large proportion of the workforce employed on vessels of one Member State and coming from other Member States or third countries. Therefore the policy options chosen were considered carefully against the impact on the sector in terms of competitiveness and costs.

Given that the present legal situation gives rise to unequal treatment of the same category of workers by different Member States, according to whether or not those Member States apply the exemptions and derogations allowed by present legislation, an EU initiative would ensure a greater level playing field, at least at the level of vessels flying the flag of a Member State.

The solution proposed seeks to avoid imposing excessive costs and is based on a careful analysis of proportionality.

Choice of instrument

The instrument chosen is a Directive. No other instrument would have been suitable. The aim is to amend five Directives in force and this can only be done through a Directive.

Detailed explanation of the provisions of the proposal

The choice of policy option implemented by provisions described below is in line with conclusions of the impact assessment¹⁹ carried out by the Commission regarding each one of the Directives (as described above in Section 2.2).

¹⁹ Impact Assessment report: SEC [...].

Article 1

This Article provides for the deletion of Article 1(3), point (b) of Directive 2008/94/EC. This will suppress the possibility of excluding share-fishermen from the scope of the Insolvency Directive.

Article 2

Article 2 suppresses Article 1(7) of Directive 2009/38/EC. Merchant navy crews will therefore be covered by the provisions of the European Works Council Directive.

Article 3

This Article amends Article 3(3) of Directive 2002/14/EC in order to clarify that Member States are able to derogate from the general provisions of the Directive only where an equivalent level of protection and effective exercise by the employees concerned is ensured.

Article 4

This Article introduces four amendments to Directive 98/59/EC.

The first amendment inserts the definition of ‘transfer’, by reference to Directive 2001/23/EC.

The second amendment deletes Article 1(2)(c), thus putting the crews of seagoing vessels within the scope of the Collective Redundancies Directive.

The third amendment clarifies that the notification provided for by Article 3(1) of the Directive should always be made to the competent authority of the State of the flag. This clarification is necessary because of the potential coexistence of employment contracts under different national laws.

The fourth amendment inserts a new provision stating that Member States may grant the competent public authority the right to derogate, in part or in full, from the provisions on the ‘cooling-off’ period when the envisaged collective redundancy is carried out as a consequence of a transfer, having as its object exclusively one vessel or more vessels, or when the employer only operates one vessel. If Member States would like to make use of this derogation, they have to consult social partners when transposing this provision into their legislation. This amendment takes into account the characteristics of the maritime sector. Applying the ‘cooling off’ period in the highly competitive market for the buying and selling of vessels would put the EU seller at a competitive disadvantage. Furthermore it provides for mitigating measures for companies operating only one vessel.

It should be underlined that in the case of a sale consisting exclusively of one vessel or more, or in the case of an employer operating one vessel, the information and consultation obligation laid down in Article 2 continues to apply.

The Directive remains fully applicable in all other circumstances where the collective dismissal of members of the crew of a vessel is envisaged.

Article 5

Current Article 1(3) of Directive 2001/23/EC is repealed. The Directive is made fully applicable to seagoing vessels registered in and/or flying the flag of a Member State, wherever they are situated. However, taking into account the specific characteristics of the maritime sector, Member States may, after consultation of social partners, derogate from the provisions of Chapter II of the Directive in the case of transfers concerning exclusively one seagoing vessel or a number of seagoing vessels, or the undertaking or business being transferred only operates one seagoing vessel. Consequently, in case of transfers concerning vessels exclusively or in the case of the undertaking only operating one vessel, at least the provisions of the Directive concerning information and consultation shall apply.

Vessels are fully covered by the scope of the Directive when they constitute one of the assets being transferred.

Article 6

Article 6 contains a non-regression clause. It aims at safeguarding the rights of workers covered by the scope of the proposal as recognised by the Member States before its entry into force.

Article 7

Article 7 contains a review clause. The objective of the review is to monitor the implementation and application of Articles 4 and 5 of the Directive in the Member States, in particular on two issues: the phenomenon of flagging out and the level of employment of EU seafarers.

Articles 8

In order to take into account the differences between Member States regarding the nature of the maritime sector and the extent to which seafarers are included in the scope of national labour legislation, article 8 provides for a transition period of 5 years.

Article 9 and 10

These are standard provisions concerning entry into force and addressees of the Directive.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the budget of the Union.

5. ADDITIONAL INFORMATION

CORRELATION TABLE

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive but they are not requested to provide a correlation table.

EUROPEAN ECONOMIC AREA

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

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

(with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²⁰,

Having regard to the opinion of the Committee of the Regions²¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Under Article 153 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament and the Council may, in accordance with the ordinary legislative procedure, adopt, by means of directives, minimum requirements for gradual implementation aiming at improving working conditions, the protection of workers where their employment contract is terminated, information and consultation of workers and the working environment to protect workers' health and safety. Such directives must avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized undertakings.
- (2) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer²², Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of

²⁰ OJ C , , p. .

²¹ OJ C , , p. .

²² OJ L 283, 28.10.2008, p. 36.

informing and consulting employees²³, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community²⁴, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies²⁵ and Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses²⁶, either exclude seagoing workers from their scope or allow the Member States to exclude them.

- (3) Insofar the existence and/or possibility of introducing exclusions is not justified on objective grounds, they should be suppressed.
- (4) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to information and consultation within the undertaking (Article 27) and the right to fair and just working conditions (Article 31), as referred to in Article 6 of the Treaty on European Union. This Directive has to be implemented in accordance with those rights and principles. However, the existence and/or possibility of introducing exclusions may prevent or limit the possibility for seagoing workers to fully enjoy their right to information and consultation, and the right to working conditions which respect workers' health, safety and dignity, both of which are enshrined by the Charter of Fundamental Rights of the European Union.
- (5) The present legal situation gives rise to unequal treatment of the same category of workers by different Member States, according to whether they apply or not the exemptions and derogations allowed by present legislation. An important number of the Member States have made limited use of the exclusions.
- (6) On 10 October 2007 the Commission presented its vision for an Integrated Maritime Policy for the European Union, the 'Blue Book'²⁷. This vision recognises that all matters relating to Europe's oceans and seas are interlinked, and that sea-related policies must develop in a joined-up way if they are to reap the desired results.
- (7) The Blue Book²⁸ stressed the need for an increase in the number and quality of maritime jobs for European citizens and the importance of improving working conditions on board.
- (8) In accordance with Article 154(2) TFEU, the Commission has consulted the social partners at the European level on the possible direction of Union action in this field.
- (9) Having regard to the technological developments of recent years notably as regards communications technology, the information and consultation requirements should be updated.

²³ OJ L 122, 16.5.2009, p. 28.

²⁴ OJ L 80, 23.3.2002, p. 29.

²⁵ OJ L 225, 12.8.1998, p. 16.

²⁶ OJ L 82, 22.3.2001, p. 16.

²⁷ COM (2007) 575 final of 10 October 2007.

²⁸ COM (2007) 575 final of 10 October 2007.

- (10) The rights of seafarers covered by this Directive, recognised by the Member States in the national legislation implementing Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and/or 2001/23/EC should be respected.
- (11) This Directive contributes to achieving the objectives under Article 151 TFEU.
- (12) It is therefore appropriate to amend the labour law Directives which exclude seafarers from their scope or allow for derogations which are not justified by objective reasons.
- (13) Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendment to Directive 2008/94/EC

Article 1(3) is replaced by the following:

‘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.’

Article 2
Amendment to Directive 2009/38/EC

Directive 2009/38/EC is amended as follows:

In Article 1, paragraph 7 is deleted.

Article 3
Amendments to Directive 2002/14/EC

Directive 2002/14/EC is amended as follows:

Article 3(3) is replaced by the following:

‘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.’

Article 4
Amendments to Directive 98/59/EC

Directive 98/59/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) In paragraph 1, the following point (c) is added:

‘(c) ‘transfer’ is interpreted in the meaning of Directive 2001/23/EC.’

(b) In Article 1(2), point (c) is deleted.

(2) In Article 3(1), a new second subparagraph is inserted:

‘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.’

(3) In Article 4, the following paragraph 1a is inserted:

‘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 provided for in paragraph 1 in the following circumstances:

(a) the object of the transfer consists exclusively of one or more seagoing vessels,

(b) the employer only operates one seagoing vessel.’

Article 5
Amendments to Directive 2001/23/EC

Directive 2001/23/EC is amended as follows:

Article 1 is amended as follows:

(1) Paragraph 2 is replaced by the following:

‘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.’

(2) Paragraph 3 is replaced by the following:

‘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.’

(3) The following paragraph 4 is added:

‘4. Member States may, after consulting the social partners, provide that Chapter II of this Directive does not apply in the following circumstances:

- (a) the object of the transfer consists exclusively of one or more seagoing vessels,
- (b) the undertaking or business to be transferred operates only one seagoing vessel.’

Article 6

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.

Article 7

The Commission, in consultation with the Member States and the social partners at Union level, shall submit a report to the European Parliament and to the Council on the implementation and application of Articles 4 and 5 of this Directive no later than 2 years after the date provided for in Article 8.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 5 years after the date of entry into force of this Directive. The Member States shall immediately communicate to the Commission the text of those provisions.

When adopted by the Member States the laws, regulations and administrative provisions necessary to comply with this Directive shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 9

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 10

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President