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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

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,
2001/23/EC

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

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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, 2001/23/EC

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Lead DG: EMPL

Associated DG: MARE

1.1. Background

Over the years, the European Union has adopted a substantial number of directives in the field of labour law, essentially aiming at ensuring that the creation and the completion of the Single Market did not lead to a lowering of labour standards or distortions in competition and at improving the living and working conditions in Europe, in accordance with the objectives of the social policy as enshrined in Article 151 TFEU.

The EU labour law directives are generally applicable to all sectors of activity and all categories of workers. Nevertheless, seafarers¹ are excluded or can be excluded from the scope of six directives², without any express justification. The Directives concerned are the following:

- Directive 2008/94/EC³ 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/EC⁴ on the establishment of European Works Council (hereafter referred to as the "European Works Council Directive");

¹ For the purpose of this Report, the term "seafarers" will be used to cover staff on-board vessels from both merchant navy and fisheries. Whenever it is necessary to distinguish between these two sectors, an express reference to the sector at stake will be used.

² The Directive use mainly two formulations: the express exclusion from the scope of the Directive (Directives on collective redundancies and transfer of undertakings) and the faculty left to Member States to exclude from the scope of national law transposing the Directives (Directives on European Works Councils and on Insolvency). Although there are differences from a legal point of view, they do not differ very much in practice: in both cases it is up to Member States to decide whether they will exclude seafarers from the scope of national law or not.

³ 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, p. 36.

⁴ 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

- Directive 2002/14/EC⁵ establishing a general framework for informing and consulting employees (hereafter referred to as the "Information and Consultation Directive");
- Directive 98/59/EC⁶ 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/EC⁷ 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/EC⁸ concerning the posting of workers in the framework of the provision of services (hereafter referred to as the "Posting of Workers Directive").

According to the **Insolvency Directive**, Member States need to establish guarantee institutions that guarantee payment of employee's outstanding claims resulting from contracts of employment or employment relationships.

The Directive provides that wherever such provision already exists in national legislation, Member States may continue to exclude from its scope share fishermen. Other categories of seafarers, notably within the merchant navy, are covered by the Directive.

The **European Works Council Directive** aims at improving the right to information and to consultation of employees in Community-scale undertakings. To that end, it provides for the setting up of a European Works Council in undertakings with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member states.

Article 1(7) of the Directive reads as follows: "Member States may provide that this Directive shall not apply to merchant navy crews". The Directive therefore applies to fishing vessels, but not to the merchant navy.

The **Information and Consultation Directive** establishes a general framework for the right to information and consultation of employees in European companies. The Directive applies, depending on the choice of the Member State, to undertakings employing at least 50 or to establishments employing at least 20 employees in any one Member State.

In its Article 3(3), the Directive states that "Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas".

(Recast), JO 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).

⁵ 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

⁶ 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.

⁷ 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.

⁸ 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.

The **Collective Redundancies Directive** sets the procedures to be applied by any employer contemplating collective redundancies. The employer must start consultation with the workers' representatives in due time to reach an agreement. The Directive establishes the minimal information to be given to workers' representatives to enable them to make constructive proposals. It provides that projected collective redundancies cannot take effect earlier than 30 days after their notification to the competent authority.

In its Article 1(2)c), the Directive lays down that it does not apply to the crews of seagoing vessels.

The **Transfer of Undertakings Directive** aims at protecting employees in the event of a change of employer, in particular, to ensure that their rights are protected. It provides that the transferor's rights and obligations arising from the contract of employment are transferred to the transferee and that the transferee is bound by the terms and conditions agreed in any applicable collective agreement.

Article 1(3) of the Directive provides that it does not apply to "seagoing vessels".

Finally, the **Posting of Workers Directive** seeks to ensure adequate balance between the protection of workers' rights and the free provision of services. Posted workers, defined as workers who, for a limited period, carry out work in the territory of another member State, will benefit, at the very least, from the conditions of employment applicable in the host Member State, concerning minimum rate of pay, including overtime rates, maximum work periods and rest periods, minimum paid annual holidays, conditions of the supply of workers by temporary employment undertakings, rules on health and safety at work, working conditions of pregnant women and young people.

Article 1(2) of the Directive lays down that it does not apply to merchant navy undertakings as regards seagoing personnel.

1.2. Policy context

In 2006, the Commission has issued a Green Paper⁹ entitled "Towards a Future Maritime Policy for the Union: A European vision for the oceans and seas", launching a comprehensive consultation and analysis of how Europe relates to the sea.

Building on this consultation, the Commission has adopted in October 2007 a Communication¹⁰ on An Integrated Maritime Policy for the European Union. This Communication laid the foundation for the tools necessary for an Integrated Maritime Policy and set out the main actions the Commission would pursue during the current mandate.

One of the aims of the Integrated Maritime Policy is to increase the number and quality of maritime jobs for European citizens, taking into account that seafarers' experience is key also for shore-based jobs.

The European Parliament Resolution of 11 July 2007¹¹ requests 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.

⁹ Document COM(2006)275.

¹⁰ Document COM(2007)575.

¹¹ Document 2007/2023(INI).

The European Economic and Social Committee¹² noted the exclusion of fishermen and seafarers from European social legislation on a number of areas and it underlined that, irrespective of the reasons behind these exclusions, it was 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.

The General Affairs and External Relations Council meeting of 16 November 2009¹³ 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.

1.3. Consultation and expertise

A broad consultation and evidence gathering process carried out within the scope of the present impact assessment allowed all interested parties (the social partners at EU level and the Member States) to express their views concerning the analysed options and measures to be proposed.

Green Paper

Chapter 2.5 of the 2006 Green Paper deals with the issue of the declining number of European seafarers, mostly merchant marine officers, which affects all Member States. It notably states that the objective for Europe should be to have quality ships, manned by highly skilled employees, working under the best conditions.

The Green Paper therefore asks: "how can the decline in the number of Europeans entering certain maritime professions be reversed and the safety and attractiveness of jobs ensured?" and "how can better working conditions, wages and safety be combined with sectoral competitiveness?"

In its 2007 Communication¹⁴, the Commission draws some conclusions from the consultation launched with the Green Paper. On the issue of jobs in the maritime sector, it states 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".

¹² Document TEN/255 CESE 609/2007, paragraph 1.7.

¹³ See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/111231.pdf, p. 14.

¹⁴ Document COM(2007)574, p. 6.

Communication on an Integrated Maritime Policy

Following this consultation, in its 2007 Communication¹⁵ on an Integrated Maritime Policy for the European Union, the Commission has announced that it would reassess, in close cooperation with social partners, the exclusion affecting maritime sectors in EU labour legislation.

First-stage consultation of European social partners

The detailed outcome of the consultation can be found in Annex 3.

In October 2007, the Commission adopted a Communication¹⁶ launching the first stage consultation of European social partners as provided for in Article 154 TFEU. The Commission asked the European social partners for their views on how to proceed on this issue.

The first 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 employees (ETF) were in favour of suppressing all exclusions, the employers (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, concerning the fishery sector, both sides of the industry were in favour of doing away with some of the existing exclusions.

Second-stage consultation of European social partners

In April 2009, the Commission launched the second-stage consultation of the European social partners. ECSA underlines that the maritime sector is already well regulated and recalled the adoption of the Directive implementing the social partners' agreement on the maritime labour convention. ECSA did not believe that a straight removal of any of the existing exclusions or derogations was justified, but would be prepared to discuss other possible ways ahead.

On the other hand, ETF reiterated its views that the current exclusions or derogations were unjustified and that there was no compelling reason to exclude seafarers from the provisions of the Directives. ETF considered that the exclusions and derogations should be suppressed, but with certain nuances for the Directive on Posting of Workers.

Contrary to the maritime sector, the social partners of the fishing sector sent to the Commission a joint reply, agreed within the Sectoral Social Dialogue Committee (SSDC). The SSDC did not take position regarding European Works Councils and Posting of Workers, but it supported the elimination of all the other exclusions in force or the establishment of equivalent specific provisions.

Responses by the Member States

A detailed questionnaire was sent to all Member States. Replies were received from 20 Member States¹⁷. A detailed overview of the responses can be found in Annex 3 of the report, detailed in the Annex dealing with the consultations of stakeholders (see Annex 3).

¹⁵ Document COM(2007)575.

¹⁶ Document COM(2007)591.

¹⁷ AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, LT, LV, MT, PL, PT, RO, SE, SI and UK.

The replies can be summarized by underlying that Member States having made the option to apply the provisions of the Directives to seafarers are unanimous concerning the estimation that this does not appear to represent significant additional costs compared to on-shore companies. None of these Member States is aware of any negative impact, notably in case of the sale of a vessel.

On the contrary, 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 important additional costs. The Member States at stake do not give any indication as for the quantification of the additional costs.

Inter-service group meeting on the Integrated Maritime Policy

The Group was set up in April 2005 by DG MARE to contribute to the production of the report on the consultation period on the Green Paper on Maritime Policy and the related action plan, subsequently adopted in October 2007.

In July 2010, the Inter-service group discussed the draft final report of the external consultant¹⁸ (the MRAG study) in view of the preparation of the Impact Assessment.

An early draft of the present Impact Assessment Report has been discussed with the Inter-service Group on 19 April 2012. A meeting was also organised on 22 March 2012 with DGs and Services more closely concerned by the initiative (invited: MARE, MOVE, ENTR, JUST, EUROSTAT, SG, LS). A draft Impact Assessment Report was discussed, as well as the areas for more detailed contribution from each service.

Task Force on maritime employment and competitiveness

In its Communication on the Strategic goals and recommendations for the EU's maritime transport policy until 2018¹⁹, the Commission established a Task Force on maritime employment and competitiveness entrusted to contribute with valuable input and recommendations on how to combine the competitiveness of European fleets with a strengthened seafaring profession in Europe. The Task Force is chaired by Sir Robert Coleman, former Director General of Transport at the European Commission and is composed by 12 additional members drawn from three groups: a group familiar with seafarers' concerns, a group familiar with shipowners' concerns and a group familiar with the concerns of the broader maritime cluster.

The Task Force delivered its report in July 2011²⁰. On the issue of exclusion of seafarers from certain labour law Directives, the Task Force underlines that "in some cases Member States had not taken advantage of the provisions, casting doubt on their necessity". It also notes that "important evolutions have occurred since the provisions were adopted, notably as regards communications technology, which might now make information and 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 Task Force therefore concludes that "the elimination or adaption of the existing exclusions should be considered" for four of the six Directives concerned: the Insolvency Directive, the Works Council Directive, the Information and Consultation Directive and the Transfer of Undertakings Directive.

External expertise

The Commission has 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.

¹⁸ 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.

¹⁹ Document COM(2009)8.

²⁰ Available here: <http://ec.europa.eu/transport/maritime/seafarers/doc/2011-06-09-tfmec.pdf>.

The Study has been carried out by a consortium led by MRAG Limited. The final report²¹ was delivered in December 2010. It will be mentioned hereafter as "the MRAG Study".

1.4. Impact Assessment Board

The Impact Assessment Board (IAB) examined this Impact Assessment and issued an opinion on 22 June 2012. The recommendations for improvement have been taken into consideration.

The problem definition has been refocused and better explained, as well as supported with further anecdotal evidence (sections 2 and 5). Additional stakeholder's views have also been included.

The intervention logic has been strengthened by designing sub-options which address the full set of problem drivers and correspond to the improved policy objectives (section 5.6.2; 5.7.2, 6.4 and 6.5). Option F has been further explained.

The presentation of options has been improved by further explaining the applicability of the proposed policy options to both merchant navy and fisheries (on the grounds of fundamental rights). The analysis of costs resulting from the policy options has been improved and its accuracy improved. Overall comparative cost of the proposed policy mix has been estimated by comparison with other options possible (Section 6.7). The impact on competitiveness has been assessed using the risk of flagging-out as indicator (see 5.1).

The section concerning future monitoring and evaluation has been improved providing for more operational and time specific arrangements (section 6). Statistical information concerning maritime employment is incomplete and usually incomparable throughout the Member States. This is reflected in this document. However, the best efforts have been made to further consolidate the statistical instruments used.

2. PROBLEM DEFINITION

The EU labour law directives are generally applicable to all sectors of activity and all categories of workers, although some adaptations have been introduced to address specific situations²².

Nevertheless, the maritime sector or a part of it is excluded or can be excluded from the scope of six directives.

The existence and/or possibility of introducing exclusions may prevent or limit the possibility for seafarers 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 in the Charter of Fundamental Rights of the European Union in Article 27 and Article 31.

²¹ 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.

²² For example: the maximum weekly working time (Article 6 of the Working Time Directive) does not apply to managing executives and family workers.

Table 0: Fundamental rights concerned and their relevance per directive

Directive	Article 27	Article 31
Employer Insolvency	NO	YES
European Works Council	YES	YES
Information & Consultation	YES	YES
Collective Redundancies	YES	YES
Transfer of Undertakings	YES	YES
Posting of Workers	NO	YES

The Directives at stake do not provide an express justification for the exclusions, which were not proposed by the Commission or justified explicitly either during the preparatory works or in the text of the directives.. Nevertheless, it can be assumed that the itinerant nature of vessels was seen as an obstacle to the application of the rules on information and consultation of workers, which are part of all the directives concerned, with the exception of the Insolvency Directive and the Posting of Workers Directive. It can be assumed that some Member States in the Council may have invoked the difficulty to communicate with vessels plying the high seas as a reason for the possibility to derogate from general rules, particularly on information and consultation. Currently, with the evolutions in terms of communications technology, this cannot be seen as a reason for the exclusion²³.

A different treatment of workers from a given sector, if not justified by objective reasons, may prevent these workers to enjoy their rights which are enshrined in the Charter of Fundamental rights of the European Union. It is therefore necessary to assess whether objective reasons can justify the different treatment of seafarers and, if not, to propose measures that would apply the same or equivalent rights to those enjoyed by on-shore workers.

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 such as isolation from friends and family, workload including short turn-around times, and the social environment on board (cultural and language difficulties), the perception that seafarers do not benefit of the same level of protection as other employees in the EU may reduce the attractiveness of maritime careers for EU citizens and especially

²³

This is recognised also by the employers' organisation (ECSA). Nevertheless, it argues that the reasons for the exclusions are linked to matters other than the logistics of information and consultation, essentially the need to avoid to add administrative burdens which would undermine European operators' competitiveness.

young students²⁴. This contributes to the perception of seagoing work as an "excluded sector" subject to its own rules or no rules at all. Doing off with those exclusions would also improve the overall perception of working conditions in the maritime sector throughout the EU. This has been confirmed by stakeholders including the Task Force on Maritime employment and competitiveness.

A recent study²⁵ carried out in the context of the preparation of the Task Force on Maritime Employment and Competitiveness (see point 1.2) looked at the balance between supply and demand of seafarers in Europe. The situation in OECD countries is serious, with a gap of 45,000 officers and of 145,000 ratings between supply and demand. It estimates that the gap will grow for OECD countries in the next ten years up to 70,000 officers and 221,000 ratings.

2.1. Scope of exclusions and terminology

The universe of workers excluded from the six directives is different from one directive to another. The different scope of the exclusions makes it difficult to quantify the number of persons affected, since in some cases all seafarers will be concerned (merchant navy and fishermen), in others only the merchant navy, and in one case only share fishermen.

Furthermore, not all the terms used are defined in the relevant directives, their interpretation being left to the national authorities. In order to take these national interpretations into account as much as possible the Commission requested the Member States, by means of a questionnaire, to provide it with information which it used in the elaboration of this document.

The terms used in the present document should be interpreted as defined in the directives, even though, in some cases, additional definitions deriving from international law and/or practice are provided in footnotes.

The table below gives an overview of the sectors of activity covered by the exclusions.

Table 1: Overview of the scope of exclusions and derogations

Directive	Fishermen excluded?	Merchant navy excluded?
Employer Insolvency	Yes, share fishermen	No
European Works Council	No	Yes,
Information & Consultation	Yes, fishermen plying the high seas	Yes, crews plying the high seas
Collective Redundancies	Yes, seagoing vessels	Yes, seagoing vessels
Transfer of	Yes, seagoing vessels	Yes, seagoing vessels

²⁴ See, among others, the Communication "An Integrated Maritime Policy for the European Union"(COM/2007/575) and the Report of the Task Force on Maritime Employment.

²⁵ Study on EU Seafarers Employment, Final Report, Guy Sulpice, May 2011.

Undertakings		
Posting of Workers	No	Yes, seagoing personnel

2.2. Situation in Member States

The directives at stake allow Member States to exclude seafarers, but do not impose that Member States do so. It is therefore important to assess how Member States have used this faculty. Although almost all member States excluded seafarers from the scope of the Posting of Workers Directive, the situation is different from a Member State to another as far as the other Directives are concerned.

Table 2: Implementation at national level

MS	Exclusion from Directives on					
	Insolvency	EWC	Information & consultation	Collective redundancies	Transfer of undertakings	Posting of workers
AT						
BE				X		X
BU						X ³
CY	X	X	X	X	X	X
CZ						
DE			X ¹	X		X ³
DK		X ¹		X	X	X
EE		X				X ³
EL	X	X ³	X ¹	X	X	X
ES						X ³
FI					X ¹	X ³
FR						X
HU		X			X	X
IE	X ²			X	X	X ³ / X ²
IT		X ³				X ³
LT		X ³				X ³ / X ²
LU			X	X	X	X ³
LV		X		X	X	X ³
MT	X	X	X	X	X	X ¹
NL					X	
PL						X ³
PT					X ¹	
RO		X ³	X		X	X

SE						X
SI						
SK				X		
UK	X ²	X ¹	X ¹	X ²		X

X excluded

X¹ MS has provided for an equivalent level of protection in national law

X² share-fishermen are excluded because qualified as self-employed workers

X³ excluded are merchant navy crews

Source: European Labour Law Network (ELLN).

The table shows in green Member States who have not made use of the derogations or exclusions (and therefore apply national law to the categories of workers excluded from the Directives), in yellow Member States who do not apply entirely the provisions of the Directive but grant an equivalent protection and in red Member States having used the faculty to exclude seafarers from national law transposing the Directives.

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.

It is worth noting that some of the big shipping nations do not exclude seafarers from the national provisions implementing the Directives, without any measurable negative impact (see point 6.2 for more details).

The merchant navy

Around 90% of world trade is carried by the international shipping industry. Without shipping the import and export of goods on the scale necessary for the modern world would not be possible. There are over 50,000 merchant ships trading internationally, transporting every kind of cargo. The world fleet is registered in over 150 nations, and manned by over a million seafarers of virtually every nationality. About 30% of the merchant ships are registered in an EU Member State (see Annex 2). In terms of gross tonnage (GT)²⁶, the EU represents 19,2% of the world fleet. The EEA represents 40% of the world fleet²⁷.

²⁶ Gross Tonnage is the internationally accepted measurement of vessels representing the volume of the vessels enclosed spaces.

²⁷ ECSA, Annual Report 2011-2012

Table 3: Top 30 Commercial Fleet Registration (GT Basis)

Flag country	vessels	GT Total
Panama	8637	223958099
Liberia	3122	125407801
Marshall Is.	2002	79555852
Hong Kong	2097	73233264
Singapore	3319	54940849
Bahamas	1463	53780248
Malta	1853	44941400
Greece	1582	43,063,752
China P.R	4135	42247731
Cyprus	1045	21676443
United Kingdom	1362	18817025
Italy	1526	18423793
Norway	1591	16,975461
Germany	820	15,505,688
Japan	5423	15227950
Isle of Man	425	13562439
United States	3631	11833928
Denmark	665	11612293
South Korea	1909	11400181
Antigua & B	1340	11331852
Bermuda	166	11270168
India	1330	9665778
Indonesia	5,921	9,505,776
Malaysia	1,503	8,056,477
Netherlands	1,264 7	836,717

France	554	6,961,264
Turkey	1358	6571223
Russia	2,319	6,036,884
Philippines	1388	5214668
Belgium	203	4528275
Total	63953	983143279
Total World	87347	1582839745

Source: ECAS, Annual report 2011-2012

It is difficult to quantify the value of volume of world seaborne trade in monetary terms, as figures for trade estimates are traditionally in terms of tonnes or tonne-miles, and are therefore not comparable with monetary-based statistics for the value of the world economy.

However, the United Nations Conference on Trade and Development (UNCTAD) estimates that the operation of merchant ships contributes about US\$380 billion in freight rates within the global economy, equivalent to about 5% of total world trade²⁸.

Throughout the last century the shipping industry has seen an increasing trend in total trade volume. Increasing industrialisation and the liberalisation of national economies have fuelled free trade and a growing demand for consumer products. Advances in technology have also made shipping an increasingly efficient and swift method of transportation. Over the last four decades total seaborne trade estimates have quadrupled, from just over 8 thousand billion tonne-miles in 1968 to over 32 thousand billion tonne-miles in 2008.

As with all industrial sectors, however, shipping can be susceptible to economic downturns. The contraction in trade, following the economic downturn in 2008, has translated into a dramatic and abrupt reduction in demand for shipping in 2009. The market recovered in 2010, but slowed down in 2011. The global shipping market faces several challenges: a general over capacity, the global economic outlook and trade growth, high operational costs (e.g. fuel), and piracy, as about half of EU shipping activity takes place in so-called cross-trades²⁹.

Table 4: International Seaborne Trade selected years (millions of tons loaded)

	2000	2005	2006	2007	2008	2009	2010	2011
Container	628	1020	1134	1264	1319	1201	1347	1477
Other dry	1905	1 852	2 032	2066	2109	1 921	1 976	2 105
Five major	1288	1701	1836	1957	2059	2 094	2 333	2 477

²⁸ UNCTAD, Maritime Transport Review, 2011

²⁹ UNCTAD Maritime Transport Review, 2011, ECSA Annual Report 2011-2012

bulks								
Crude oil and products	2163	2 422	2698	2747	2 742	2 642	2 752	2 820

Source: UNCTAD, Maritime Transport Review, 2011

This had also consequences for seafarers. The economic downturn is raising real fears that crews could be left high, dry and unpaid if shipping companies become bankrupt while they are in transit³⁰. Services are being rescheduled and unprofitable routes are cut. Reportedly, crews are repatriated without knowing when they will be paid. Some shipping companies are in financial difficulties or file for bankruptcy³¹.

The fishing industry

The world fishing fleet consisted of about 4.4 million vessels in 2010, relatively stable since 1998, with 73 percent in Asia, followed by Africa, Latin America and the Caribbean, North America and Europe. In total, 3.2 million vessels were considered to operate in marine waters and 1.1 million vessels in inland waters. Globally, 60 percent of the fishing vessels were with engines in 2010 and over 85 percent of the motorized fishing vessels were less than 12 m in length overall (LOA).

Total global capture production decreased by about 1.1 percent in 2010, due to a drop in anchoveta catches of 2.7 million tonnes. On the other hand, catches of all other marine species excluding anchoveta grew by 0.9 million tonnes, and the reported inland waters catch continued its increasing trend with world production reaching 11.2 million tonnes in 2010, although the statistics for this sector remain highly approximate for many countries.³²

The EU fishing industry provides some 6.4 million tonnes of fish each year. Fishing and fish processing provide jobs for more than 350,000 people.

In 2006 five Member States (Denmark, Spain, France, the Netherlands and the United Kingdom) accounted for 60 % of Community production. There are structural differences between these five countries. In Denmark, 69 % of production is for industrial use, mainly the production of fishmeal, whereas the corresponding figure in the United Kingdom is only 6 %. In Spain, France and the Netherlands, all production is intended for human consumption. Catch values and employment in the fisheries sector are an accurate reflection of this situation. For example, the unit value of landings in Spain is seven times higher than that of Danish landings.

In the period 2005 to 2008 the EU fleet continued the decline seen in the period 2000 to 2005. This was in spite of the inclusion of the fleets of new Member States in 2004 and 2007.

The decrease in vessel numbers was 12.4% from 2000 to 2005 compared with a fall of 5.8% from 2005 to 2008. In 2008 the EU-27 fishing fleet consisted of under 87 thousand vessels with a total tonnage of nearly 1.9 million tonnes and a total engine power of 6.9 million KW

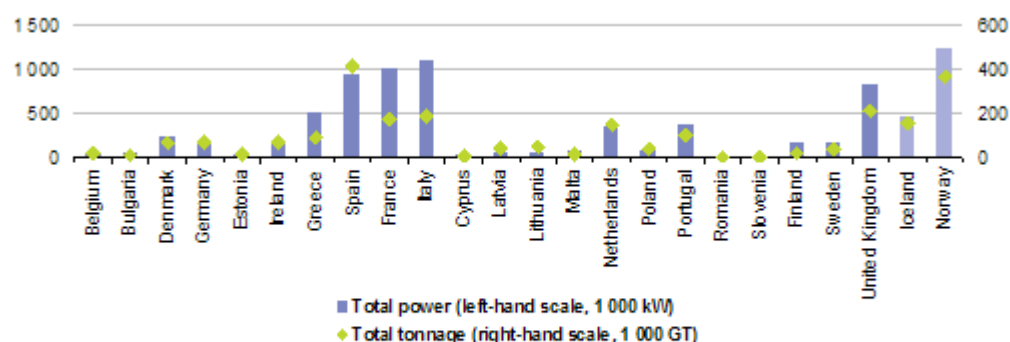
³⁰ For an overview of cases of abandonment, see the ILO's database: <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>

³¹ ITF Seafarers' bulletin 2012.

³² FAO, Agriculture and Fisheries Department

By far the largest fishing fleets among the EU Member States, in terms of power, were those from Italy, France, Spain and the United Kingdom; in 2010, the fishing fleets of each of these countries had a collective power of between 0.8 million kW and 1.1 million kW. In terms of tonnage, however, the Spanish fishing fleet was by far the largest (415 000 gross tonnes), which was at least twice the size of the fleets in the United Kingdom, Italy or France. The fishing fleets of Norway and Iceland were also relatively large. Indeed, the fleet in Norway had more power (1.2 million kW) than any of the fleets from the EU Member States, while in tonnage terms the Norwegian fleet (366 000) was smaller only than the Spanish one.³³

Table 5: Fishing fleet EEA countries



(1) The Czech Republic, Luxembourg, Hungary, Austria and Slovakia are landlocked countries without a marine fishing fleet.
Source: Eurostat (online data code: fish_fleet)

With the exception of Belgium and the Netherlands, where large vessels predominate, all Member States' fleets have relatively similar structures. In Greece, Ireland, France, Poland and the United Kingdom more than 50 % of vessels are less than 12 metres in length, reflecting the importance of coastal fishing in those countries.

³³ Eurostat, Fishery Statistics, September 2012

Table 6: Total catches in all fishing regions, 2000-2010 (1 000 tonnes live weight)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
EU-27	6 789	6 920	6 321	5 892	5 875	5 641	5 450	5 180	5 176	5 068	4 923
Belgium	30	30	29	27	27	25	23	25	23	22	22
Bulgaria	7	7	15	12	8	5	8	9	9	9	11
Czech Republic	5	5	5	5	5	4	5	4	4	4	4
Denmark	1 534	1 511	1 442	1 031	1 090	911	868	653	691	778	828
Germany	206	211	222	261	261	286	298	295	280	250	210
Estonia	113	105	101	79	88	100	87	99	101	97	95
Ireland	278	356	282	266	280	268	212	215	205	269	319
Greece	99	94	96	93	93	92	98	95	89	83	71
Spain	1 067	1 096	852	857	772	768	744	738	919	761	739
France	702	680	703	709	671	595	593	558	499	440	443
Italy	302	310	270	296	279	298	316	287	236	253	234
Cyprus	67	81	2	2	2	2	2	2	2	1	1
Latvia	136	128	114	115	125	151	140	155	158	163	165
Lithuania	79	151	150	157	162	140	155	187	183	173	140
Luxembourg	-	-	-	-	-	-	-	-	-	-	0
Hungary	7	7	7	7	7	8	8	7	7	6	6
Malta	1	1	1	1	1	1	1	1	1	2	2
Netherlands	496	518	464	526	522	549	470	414	417	382	285
Austria	0	0	0	0	0	0	0	0	0	0	0
Poland	218	225	223	180	192	155	145	152	142	224	149
Portugal	189	192	202	209	221	219	229	253	224	199	223
Romania	7	8	7	10	5	6	7	6	5	4	3
Slovenia	2	2	2	1	1	1	1	1	1	1	1
Slovakia	1	2	2	2	2	2	2	2	2	2	2
Finland	156	149	145	121	135	131	149	165	151	155	151
Sweden	339	312	295	287	270	256	269	238	231	203	212
United Kingdom	748	740	690	637	655	669	621	616	595	587	608
Iceland	2 000	2 001	2 145	2 002	1 750	1 661	1 345	1 421	1 307	1 164	1 063
Liechtenstein	-	-	-	-	-	-	-	-	-	-	-
Norway	2 700	2 687	2 740	2 549	2 525	2 393	2 256	2 378	2 431	2 524	2 563
Switzerland	2	2	2	2	2	1	1	1	2	2	2
Montenegro	.	.	.	.	.	.	1	1	1	2	1
Croatia	21	18	21	20	30	35	38	49	49	56	53
FYR of Macedonia	0	0	0	0	0	0	0	0	0	0	0
Serbia	.	.	.	.	.	.	3	3	3	4	5
Turkey	503	528	567	508	550	426	533	632	494	464	486

Source: Eurostat (online data code: fish_ca_00)

2.3. Data on seafarers

First of all, it should be noted that, in order to give a working estimate of affected seafarer numbers, the applicable law to contracts of employment in the shipping industry has been taken to be the law of the flag since this is the commonest practice³⁴.

Data on seafarers is not systematically gathered at national level. Over recent years a number of international surveys have been undertaken to measure the number of European seafarers³⁵. However, there are still many loopholes and no uniform methodology to calculate the number of seafarers in employment. As a result of using different sources and methodologies, such surveys arrive at different conclusions (see Annex 1).

The Commission has asked Member States to provide figures on the number of seafarers active at national level. When available, the present report uses the data received from national authorities. When not available, taken into account the

³⁴ See the MRAG Study, p. 10-12.

³⁵ See references in the MRAG Study, p. 15-16.

disparities in the different studies, it is more appropriate to use an average of all the identified sources, instead of using a single source.

The present report is therefore based on the information from national authorities or a calculation of the average numbers of seafarers based on the studies listed in Annex 1.

Table 7: employment in the merchant navy

Member State	Estimated employment in merchant navy
AT**	537
BE*	879
BU**	16,579
CY*	21,000
CZ**	967
DE*	15,179
DK*	9,200
EE*	6,250
EL*	44,800
ES*	12,138
FI*	9,175
FR*	23,060
HU**	250
IE**	1,320
IT**	21,955
LT*	1,204
LU**	2,306
LV*	500
MT*	43,000
NL**	13,358
PL*	25,000
PT*	14,853
RO**	20,191
SE*	13,997
SI*	300
SK**	457
UK*	27,000
Total EU 27	345,455

*: Source: national authorities

** : Source: average calculated from studies listed in Annex 1

How many fishermen in Europe?

The number of seagoing fishermen in Europe is very much concentrated in a handful of countries: Spain, Greece, Italy and France account for a high proportion of total employment in the fisheries sector in the EU.

Table 8: Employment in the fisheries sector

Member State	Estimated employment in fisheries
Austria***	0
Belgium**	239
Bulgaria*	1507
Czech Republic***	0
Cyprus***	747
Denmark**	3635
Estonia***	247
Finland**	2195
France**	23000
Germany**	739
Greece***	24745
Hungary***	0
Ireland***	3838
Italy***	25426
Latvia**	865
Lithuania***	744
Luxembourg***	0
Malta**	894
Netherlands	1966
Poland**	3071
Portugal**	13731
Romania*	6811
Slovenia**	117
Slovakia***	0
Spain**	28462
Sweden***	1879
UK**	12703
Total	157561

* Source: ECOTEC, An exhaustive analysis of employment trends in all sectors related to sea or using sea resources. Data for 2006.

** Source: national authorities

*** Source: The 2009 Annual Economic Report on the European Fishing Fleet.

The universe of excluded workers is different from a Directive to another and across Member States due to their different choices in terms of use of the exclusions and derogations.

In order to give a general idea of the dimension of the problem, the table below gives an overview of the number and proportion of workers concerned for the whole EU.

Table 9: Workers affected by the exclusions

		Insolvency	EWC	Consultation and Information	Collective Redundancies	Transfer of Undertakings	Posting of Workers
Total	Merchant navy	Not excluded	159150	86497	138141	155925	272520
	Fisheries	26386	Not excluded	8452	35702	43501	Not excluded
% in category	Merchant navy	Not excluded	46.1%	25.0%	40%	45.1%	78.9%
	Fisheries	16.7%	Not excluded	5.4%	22.7%	27.6%	Not excluded
% of EU workforce 36	Merchant navy	Not excluded	0.07%	0.04%	0.06%	0.07%	0.11%
	Fisheries	0.01%	Not excluded	0.004%	0.015%	0.018%	Not excluded

The percentage of workers affected by this initiative in relation to the number of workers in the same category varies from 5.4%% to 78.9%. In any case, compared with the EU active population, this situation concerns a marginal proportion of workers (from 0.004% to 0.11%).

2.4. A regulatory failure?

A different treatment of a certain category of workers without any objective justification could be problematic in terms of equal treatment between categories of workers. Due to the different scope of the exclusions and the diversity of the legal texts concerned, it is necessary to determine whether it can be inferred from the context any objective justification of the exclusions. It is also necessary to determine whether the directive could be applied as such to seafarers or whether such an exclusion results in a way or another from the specificities of the sector.

The directives contain no reasoning on the reasons and aims of the exclusions. It should be recalled that these exclusions were not part of the Commission's proposal, but were inserted at a later stage during the inter-institutional negotiations.

The absence of express reference in the preparatory works or recitals of the directives does not per se mean that the exclusion is not justified. It has to be assessed whether other elements gleaned from the general context can allow the identification of the objective underlying the exclusion. This will be done below for each directive.

³⁶

239,608 workers, according to Labour market statistics 2011 edition, Eurostat

2.4.1. *Employer Insolvency Directive*

The Directive provides that wherever such provision already exists in national legislation, Member States may continue to exclude from its scope share fishermen. Other categories of seafarers, notably within the merchant navy, are covered by the Directive.

Is there an objective justification for the derogation?

As mentioned above, the possibility that Member States exclude share fishermen was not in the original proposal from the Commission. It was inserted during the inter-institutional negotiations, without any attempt to justify it in the preamble of the Directive.

It should nevertheless be assessed whether an objective justification can be inferred from the general context.

There is an important difference between share fishermen and other categories of workers: share fishermen are usually paid at the end of the trips, which for most of them do not last for more than one to three days. Share fishermen are paid once the catch is sold, i.e. they are paid before the following trip. Therefore, as underlined by the MRAG study, "the accrual of unpaid wages is relatively less likely to take place than in circumstances where a worker is paid a weekly or monthly wage".

Nevertheless, as the social partners have underlined in their joint contribution to the second-stage consultation, "often a guarantee wage is fixed to secure a minimum pay to fishermen". This guarantee wage is not different from the wage received by any other worker and could be left unpaid in case of insolvency.

Furthermore, it should be mentioned that the Directive also deals with the potential impact of the non-payment of compulsory contributions due by the employer to social security. On this aspect, there does not seem to be any difference between share fishermen and any other category of employees.

According to a settled case-law³⁷, the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified.

In the case at stake, although the system of remuneration is partially specific, it does not appear that share fishermen and other workers are in a substantially different situation concerning the exposure to the risk of non-payment in case of insolvency as to justify this faculty to exclude them from the scope of the Directive.

Would the Directive apply if no express exclusion/derogation?

Without express provision, the Directive would entirely apply to share fishermen.

2.4.2. *European Works Council Directive*

Article 1(7) of the Directive reads as follows: "Member States may provide that this Directive shall not apply to merchant navy crews". The Directive therefore applies to fishing vessels, but not to the merchant navy.

³⁷ Case 106/83 *Sermide* [1984] ECR 4209, paragraph 28; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 63; Case C-127/07 *Arcelor Atlantique et Lorraine and Others* [2008] ECR I-9895, paragraph 23, and Case C-558/07 *S.P.C.M. and Others* [2009] ECR I-5783, paragraph 74.

Is there an objective justification for the exclusion?

The Directive has a horizontal nature and was intended to apply to all sectors of activity. As the Commission notes in its 2007 Communication³⁸, "the provisions of the Directive are flexible (the information and consultation mechanisms are negotiated in order to adapt them to company characteristics)". There does not appear to be an objective justification for the exclusion although "the specific working patterns of seafarers will always need to be taken into account".

Would the Directive apply if no express exclusion?

There are no provisions in the Directive which could be inapplicable to the excluded sector. The fact that seafarers spend periods of time off-shore is in itself not an obstacle to the application of the provisions of the Directive.

2.4.3. Information and Consultation Directive

Directive 2002/14/EC establishes a general framework for the right to information and consultation of employees in European companies. The Directive applies, depending on the choice of the Member State, to undertakings employing at least 50 or to establishments employing at least 20 employees in any one Member State.

In its Article 3(3), the Directive states that "Member States may derogate from this Directive through particular provisions applicable to the crews of vessels plying the high seas".

Is there an objective justification for the derogation?

It is worth underlying that there is no exclusion, since the Directive imposes that Member States who derogate from the provisions of the Directive do it through "particular provisions". Member States can therefore derogate from the rules of the Directive but provided they adopt specific provisions on information and consultation applicable to the crews of vessels.

According to the Commission document launching the second-stage consultation of European social partners, the reasons raised by the Member States to justify the use of the derogation were as follows: the difficulty in applying information and consultation procedures on board ships operating far away from the undertaking's seat and the fact that seafarers' contracts are frequently short-term.

In view of the relevance of the rights at stake, it can be made clearer in the text that Member States can only derogate from the provisions of the Directive if they adopt alternative provisions ensuring equivalent level of rights on information and consultation.

Would the Directive apply if no express derogation?

The definitions of "undertaking" and "establishment", which refer to the location "within the territory of the Member State" could be problematic. As the Commission wrote in the document launching the first-stage consultation of European social partners, "the application of the law of the flag is generally based on the notion of nationality of a vessel rather than assimilation to the territory".

The fact that seafarers spend periods of time off-shore is in itself not an obstacle to the application of the provisions of the Directive since the obligations in term of information and consultation could be fulfilled using available IT technologies.

³⁸ Document COM(2007) 591 final.

2.4.4. *Collective Redundancies Directive*

In its Article 1(2)c), the Directive lays down that it does not apply to the crews of seagoing vessels.

Is there an objective justification for the exclusion?

In 1991, in the explanatory memorandum³⁹ attached to its proposal for the review of Directive 75/129/EEC⁴⁰, the Commission considered that "the information, consultation and notification requirements laid down in this Directive are in no way incompatible with the special nature of the contract of employment or employment relationships of the crews of sea-going vessels. Their exclusion from the protection provided by the Directive is not justifiable, unless they are covered by other forms of guarantee offering them protection equivalent to that resulting from the Directive".

This remains valid, even more so now that the right to information and consultation became a fundamental right enshrined in the EU Charter of Fundamental Rights.

Would the Directive apply if no express exclusion?

There are no provisions on the Directive which could be inapplicable to the excluded sector. The fact that seafarers spend periods of time off-shore is in itself not an obstacle to the application of the provisions of the Directive since the obligations in term of information and consultation could be fulfilled using available IT technologies.

2.4.5. *Transfer of Undertakings Directive*

Article 1(3) of the Directive provides that it does not apply to "seagoing vessels".

Is there an objective justification for the exclusion?

As underlined by the Commission in its Communication launching the second-stage consultation of European social partners, neither the original Commission proposal⁴¹ nor the amended proposal⁴² contained any specific reference to seagoing vessels. In 1994, in its proposal for the revision of the Directive⁴³, the Commission considered that seagoing vessels could be excluded from the information and consultation rights granted by the Directive but not from its fundamental provisions, i.e., the maintaining of the employees' rights existing at the moment of the transfer.

As mentioned above, the merchant navy sector is characterised by a high proportion of employees being on fixed term employment contracts. This could make a difference in terms of accrued rights, but it does not seem to be relevant when the Directive aims at protecting the maintenance of the existing rights at the moment of the transfer.

As for information and consultation rights, the absolute exclusion does not appear to be justified by the specificities of the sector, although they could justify some differentiation from the general rules to take into account the itinerant nature of vessels.

Would the Directive apply if no express exclusion?

³⁹ Document COM(91) 292.

⁴⁰ Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 048, 22.02.1975, p. 29.

⁴¹ Document COM(74)351.

⁴² Document COM(75)429.

⁴³ Document COM(94)300.

The Directive applies "where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty". The reference to the "territorial scope of the Treaty" could cast doubts as far as certain vessels plying the high seas are concerned.

2.4.6. *Posting of Workers*

Article 1(2) of the Directive lays down that it does not apply to merchant navy undertakings as regards seagoing personnel.

The Commission adopted on 21 March 2012 a legislative package including a proposal for a Directive⁴⁴ on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and a proposal for a Council Regulation⁴⁵ on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

The proposal for a Directive does not intend to amend Directive 96/71/EC. It aims to improve, enhance and reinforce the way in which this Directive is implemented, applied and enforced in practice across the European Union by establishing a general common framework of appropriate provisions and measures for better and more uniform implementation, application and enforcement of the Directive, including measures to prevent any circumvention or abuse of the rules.

On the other hand, the proposal for a Council Regulation aims to clarify the general principles and EU rules applicable to the exercise of the fundamental right to take industrial action within the context of the freedom to provide services and the freedom of establishment, including the need to reconcile them in practice in cross-border situations.

Therefore, this legislative package did leave unchanged the scope of the Posting of Workers Directive and did not deal with the exclusion of merchant navy undertakings as regards seagoing personnel.

Is there an objective justification for the exclusion?

The exclusion could be justified by the specific nature of the itinerant work done by this group of workers and the practical difficulties associated with monitoring them. This was the view taken by representatives of Member states meeting in the context of the Working Party on the transposition of the Directive.

Would the Directive apply if no express exclusion?

There is a doubt on whether the provisions of the Directive could apply to seagoing personnel at all, even in the absence of the express exclusion. Indeed, posted workers are defined in the Directive as workers who, for a limited period, carry out their activities in the territory of a Member State other than the State in which they normally work. In practice, situations equivalent to posting seem to be rare in the maritime sector. According to the MRAG Study, "the temporary posting of workers from a vessel flying one flag to a vessel flying another flag may happen occasionally but essentially seems to be a rather rare kind of situation".

Even if the situation exists, as mentioned by the Commission in the Communication⁴⁶ launching the first-stage consultation of European social partners,

⁴⁴ COM(2012)131 final.

⁴⁵ COM(2012)130 final.

⁴⁶ Document COM(2007)591, p. 7.

"seagoing personnel on a vessel plying the high seas are not to be considered as being posted to the territory of another Member State", since "the application of the law of the flag is generally based on the notion of nationality of a vessel rather than assimilation to the territory".

This why in the previously mentioned Communication the Commission considered that "the definition of posting contained in Directive 96/71/EC does not seem to be applicable to seagoing personnel. The existing exclusion appears to reflect this reality and therefore to be justified". This remains valid.

2.5. The EU right to act and subsidiarity

This exercise concerns the possible review of six 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.

The Directives at stake have been adopted at different moments with mainly three legal bases: Article 100 EC (Maastricht consolidated version of the Treaties), Article 94 EC (Nice consolidated version) and Article 137 EC (Nice consolidated version), corresponding to current Article 115 TFEU and Article 153 TFEU.

Depending on the Directives to be amended, this could be done by a single proposal for a Directive based on Article 153 TFEU or on separate proposals based on Article 153 TFEU, on Article 115 TFEU and on Articles 53(1) and 62 TFEU.

This initiative covers a sector subject to a strong international competition and with a large part of the workforce employed in the vessels of Member States coming from other Member States or third countries. An EU initiative would ensure a level playing field, at least at the level of vessels carrying the flag of a Member State.

2.6. Baseline scenario

In the EU, the legal situation is characterised by its diversity in practical and legal terms. The importance of the maritime sector as a whole is very different from a landlocked country to a country with a large maritime coast and tradition. The legal situation, as far as the Directives at stake are concerned, is also very different, Member States having made different choices when implementing the exclusions and derogations of the EU Directives. Table 2 in chapter 2 gives an overview on whether Member states have made use of the exclusions or derogations.

In the absence of new EU action, the current situation would remain unchanged as far as the labour law Directives are concerned. This would mean that, at EU level, the protection of labour rights protected under the EU Charter of Fundamental Rights would be kept at a problematic low level.

The gradual decrease of the number of EU seafarers will continue and this is problematic for the whole maritime cluster, since experience off-shore is essential for certain shore-based jobs.

The maritime sector has a clear international dimension. In this context, it should be underlined that the Maritime Labour Convention, 2006⁴⁷, enters into force on 20 August 2013. The Convention will harmonize the working conditions of seafarers

⁴⁷

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_090250.pdf. Information on ratification is available on the ILO webpage: <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>.

throughout the world and therefore contribute to fill the gap between vessels holding an EU flag and vessels holding third countries flags.

At EU level, the adaption of the EU legal acquis to the standards of the Convention is done by Directive 2009/13/EC implementing the European social partners' agreement⁴⁸.

On the other hand Directive 2009/16/EC⁴⁹ on port State control will contribute to reduce substandard shipping in the waters under the jurisdiction of Member States and therefore ensure a level playing field at international level.

Nevertheless, it is important to note that neither the Convention nor the Directive deal with the issues that are the subject of the present report and would therefore not change the current situation on these matters.

Despite the entry into force of the Maritime Labour Convention, perception of a lower level of protection of off-shore jobs would continue. For a young European envisaging to engage into a maritime job, the perceived difference of protection by European and national law of off-shore jobs (compared to on-shore jobs) is a factor of dissuasion. This would continue to exert a downward pressure upon the willingness of young students to envisage a career in the merchant navy or the fishing sector. Therefore, the number of EU workers citizens wishing to engage into merchant navy or fishing jobs would continue its downward trend, thus aggravating the already serious shortage of skills and manpower in this sector.

3. OBJECTIVES

3.1. General objectives

This initiative aims to improve the level of protection of the rights protected under the EU Charter of Fundamental Rights in labour law. 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.

3.2. Specific objectives

In order to reach the general objectives set above, the present initiative has the following specific objectives:

- (a) Improve the level of protection of the rights protected under the EU Charter of Fundamental Rights, in particular by assessing whether a different treatment is objectively justified by the characteristics of the sector and, if not by enhancing the rights of workers in the seafaring professions in order to bring them up to the standard enjoyed by workers on shore;
- (b) Contribute to bring more young EU citizens into jobs in the merchant navy and fisheries sectors, by making them more attractive compared with on shore jobs and improve the retention of seafarers in the profession.

⁴⁸ According to Article 7 of the Directive, it enters into force on the date of entry into force of the Maritime Labour Convention, 2006. Article 5 provides that Member states shall transpose its provisions into national law not later than 12 months after the date of entry into force of the Directive.

⁴⁹ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast), OJ L 131/57, 28.5.2009, p. 57.

3.3. Consistency with other EU policies and horizontal objectives

This initiative aims at assessing the scope and reasons for the exclusion or faculty to exclude of seafarers from labour law Directives. The Commission is committed to ensure the compatibility of any new legislative proposal with the EU Charter of Fundamental Rights. 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.

On the other hand, this initiative is also fully in line with the Integrated Maritime Policy for the European Union, established in 2007 through the so-called "Blue Book"⁵⁰. The Blue Book stressed the need for an increase of the number and quality of maritime jobs for European citizens. It considered that "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". It therefore announced Commission's intention to "reassess, in close cooperation with social partners, the exclusion affecting maritime sectors in EU labour legislation".

This initiative is also in line with the EU 2020 Strategy and its goals, notably in terms of employment.

4. POLICY OPTIONS

It should be noted that the policy options below will be assessed separately for each Directive. The preferred option for the initiative as a whole could therefore be a combination of the different policy options.

4.1. Policy option A: 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 and Member States would remain free to use or not use the derogations and exclusions. Trends show 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 non-EU countries. As the Green Paper "Towards a future Maritime Policy for the Union" notes, "evidence suggests that the causes of this decline are to be found on both the demand and supply sides. In shipping, competitive pressures reduce the willingness of employers to offer openings at wage levels that are attractive to Europeans. Coupled with the impression that jobs are not secure and to a much lesser extent working conditions are poor, this has led to a reduction in the number of candidates applying for positions within the maritime profession".

4.2. Policy option B: no legally-binding measures

This option would consist of non-legally binding measures aimed at reaching the objectives set for the initiative without any further legal measure.

The Commission could issue a Recommendation providing that Member States consider whether the use of the exclusions at national level is still necessary and, if not, take the initiative to suppress it from national law. Such a recommendation could also encourage employers' and employees' organisations to discuss at the appropriate level the adoption of rules in the areas excluded by national measures transposing the Directives.

⁵⁰ Document COM(2007) 575.

4.3. Policy option C: a derogation subject to the guarantee of an equivalent level of protection

This option entails 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 is ensured.

This option would allow 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.

This option would require the adoption of a proposal for a Directive amending the existing texts, based on Article 153 of the TFEU.

4.4. Policy option D: suppress the exclusions in all Directives

This option would be based on the assumption that, all of the proposals were originally intended to include all sectors of activity and that the exclusions of seafarers are unjustified and in breach of the fundamental rights to information and consultation and/or fair and just working conditions.

This option would require the adoption of a proposal for a Directive amending the existing texts, based on Article 153 of the TFEU.

4.5. Policy option E: 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. This option would address the concerns expressed by some stakeholders concerning the specificities of the sector and the additional costs.

Depending on each particular Directive, this could mean that it could be necessary to put in place special arrangements concerning the application of information and consultation obligations (Option a) or the eligibility as worker representative or the application of general rules to the sale of a vessel. (option b) .

This option would require the adoption of a proposal for a single Directive amending all the concerned Directives based on Article 153 of the TFEU. Contrary to options C and D, it would not aim at simply suppressing the exclusions or provide for an equivalent level of protection, but rather at determining the substantive rules which would apply to the sector taking into account its specificities. Taking into account the financial impacts of the options which is a concern expressed by the Member States (see annex 3), this could mean, for instance, providing for a specific rule to apply in situations which are specific to the sector such as, for instance, the frequent sale of a vessel or collective redundancies. This would not exclude the information and consultation rights of seafarers as underlined by other stakeholders.

4.6. Policy option F: suppression of the exclusions for the fisheries sector only

This option would be based on the outcome of the consultations of European social partners. Since there is an agreement between both sides of industry for the fisheries sector and disagreement between employees' and employers' organisations for the merchant navy, this option would draw an immediate consequence from this situation.

4.7. Preliminary screening of the options

Two of the six options identified above seem hardly compatible with the objectives and nature of the initiative.

Option B above (no legally-binding measures) could encourage Member States to apply the provisions of the Directives to seafarers but it is hardly imaginable that all Member States would do so. Even if this was the case, depending on national law, level of protection of rights enshrined by the EU Charter of Fundamental Rights could be low in certain cases.

On the other hand, option B would not contribute to change the perception that seafarers' jobs are less protected and valued than on-shore jobs. It would therefore not encourage more young Europeans to engage into maritime professions.

Option B is therefore not a viable option and should be discarded without in-depth analysis of its economic and social impacts.

Option F consists in suppressing the exclusions for the fisheries sector only. It concerns a more limited personal scope than option D. When option D is used Option F is implied. The use of Option F can have

- (a) no effect when fishermen are not excluded (EWC, Posting of Workers),
- (b) more limited effect than Option D when both seafarers and fishermen are currently excluded (Information and consultation, Collective redundancies, Transfer of undertakings) or
- (c) the same effect as Option D when only fishermen are currently excluded (Employer insolvency regarding Article 1(3))

As such, this option could be realistic since there is an agreement between the two sides of industry in the fisheries sector on this issue, contrary to what happens in the merchant navy.

Nevertheless, the inclusion of fishermen only within the scope of the Directives would reach the objectives set for the initiative for a small part only of all employees concerned by the exclusions. It would leave unchanged, reduce the level of protection of the rights enshrined by the Charter.

Therefore, it seems that concerning the situations where Option F has more limited affect than D, the latter should be considered instead of the former (situation b). Situation (a) can be disregarded. As regards situation (c) the effect of F is equivalent to D and therefore the latter can be used instead of the former for the sake of clarity of analysis.

The agreement of social partners from the fisheries sector is an important element to take into consideration when deciding on the way forward, but it cannot be the only element to take into account. Option F alone is therefore not a viable option and should be discarded without in-depth analysis of its economic and social impacts.

4.8. Options retained for the Impact Assessment

In consequence, the following options will be subject to a detailed impact assessment and comparison of costs and benefits:

- **Option 1**: no EU action

- **Option 2:** a derogation subject to the guarantee of an equivalent level of protection
- **Option 3:** suppress the exclusions in all Directives
- **Option 4:** adapt the rules to the specificities of the sector.

4.9. SME Test

4.9.1. Preliminary assessment of businesses likely to be affected

In its Report entitled "Minimizing regulatory burden for SMEs – Adapting EU regulation to the needs of micro-enterprises"⁵¹, the Commission announces that "from January 2012 the Commission's preparation of all future legislative proposals will be based on the premise that in particular micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of their being covered can be demonstrated".

It is therefore necessary to assess the impact of this initiative on SMEs and specifically consider whether micro-enterprises should be covered.

As a preliminary, it should be underlined that some of the Directives at stake do not apply to micro-enterprises and some of them do not even apply to small or medium-sized enterprises. Indeed, most of the Directives include a threshold in terms of number of employees which excludes enterprises with a small number of staff. The table below summarizes the situation for the six Directives at stake.

Table 10: Applicability of the Directives according to the number of employees

Directive	Threshold
Insolvency Directive	No threshold, applies to all types of undertakings.
European Works Council Directive	Undertakings and groups with at least 1000 employees within the MS and at least 150 employees in each of at least two MS.
Information and Consultation Directive	Undertakings employing at least 50 employees in any one MS <u>or</u> establishments employing at least 20 employees in any one Member State.
Collective Redundancies Directive	Applies to collective redundancies of: (i) either, over a period of 30 days: - at least 10 in establishments normally employing more than 20 and less than 100

⁵¹ Document COM(2011)803.

	workers, - at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers, - at least 30 in establishments normally employing 300 workers or more, (ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.
Transfer of Undertakings Directive	The provisions on information and consultation can be limited by MS to "undertakings or businesses which, in terms of the number of employees, meet the condition for the election or nomination of a collegiate body representing the employees".
Posting of Workers Directive	No threshold, applies to all types of undertakings.

As it appears from the tables above, there are only two Directives which apply irrespective of the size of the company – Insolvency and Posting of Workers. For the rest, one of them (European Works Council Directive) does not apply at all to SME's, another one applies in principle to medium-sized companies or small companies, although is more likely to apply to bigger enterprises (Collective Redundancies), the Directive on Information and Consultation only applies to large and medium-sized companies and another one (Transfer of Undertakings) has introduced mitigating measures for small and micro-enterprises, allowing them not to apply some of its provisions.

4.9.2. *Consultation with SMEs representatives*

As mentioned previously, the Commission consulted twice the European social partners from both sectors concerned, merchant navy and fisheries.

The position of the European social partners is explained in point 1.2 of the present report.

4.9.3. *Measurement of the impact on SMEs*

The impact of this initiative on SMEs, essentially on small and micro-enterprises is reduced. On one hand, most of the Directives already exclude small and micro-enterprises, on the other hand, when this is not the case (the Insolvency Directive, for example), the employers' organisation for fisheries at European level is in favour of the suppression of the derogation for their sector.

4.9.4. *Alternative options and mitigating measures*

Mitigating measures are already in place for most of the Directives concerned. In any case, two of the envisaged policy options (policy options 2 and 4) would require amendments to the Directives to adapt their provisions to the reality of the maritime sector.

Since micro-enterprises will not be affected (and small enterprises only marginally), it is not necessary to reverse the burden of proof and assess the proportionality of their being covered.

5. ANALYSIS OF IMPACTS

5.1. The risk of flagging out and its link with competitiveness

Shipping has historically been a globalised industry. With a few exceptions, such as ferries and cabotage, world shipping operates with few barriers to entry. As both supply and demand for shipping is global, shipping companies compete directly with each other all around the world.

The globalised nature of the shipping industry manifests itself in a number of different ways but a key element is the legal regime for the flagging (and re-flagging) of ships, a process that has no direct equivalent in land-based industries. Shipowners have strategically chosen to fly another state's flag for almost as long as there have been shipping records. Widespread use of such flags, however, came only with the decision by certain States beginning around the 1920s to create 'open registries', where ships were not required to have onerous ties to a state to register.

From the outset, the phenomenon of flagging out has been largely driven by the desire of shipowners to avoid the costs and restrictions associated with having their ships registered in the traditional maritime States. One of the main costs of operating a ship is the cost of paying crew salaries and other related costs. It is estimated that crew cost differences between selected EU flags and lower-cost open registry vessels range from +22% to +333%⁵².

The risk of flagging out is thus directly proportional to the difference in the manning costs between the lower-costs countries and higher-costs countries. Therefore, it constitutes a good indicator of the impact which the policy options taken into consideration in the present document might have on the competitiveness of EU vessels.

It should be noted that the entry into force in August 2013 of the Maritime Labour Convention 2006 will approximate the working conditions on board ships throughout the world. The Convention establishes comprehensive minimum requirements for almost all aspects of working conditions for seafarers including, inter alia, conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection. A detailed description of the provisions of the Convention can be found in Annex 4.

Directive 2009/16/EC⁵³ on port State control will also contribute to reduce substandard shipping in the waters under the jurisdiction of Member States. It is expected that it will ensure a level playing field at international level and reduce the encouragement to flagging-out.

European shipowners have made considerable use of non-EU registries: some 46% of the total EEA-controlled fleet is currently registered under third country flags⁵⁴.

⁵² Mitroussi, K. 'Employment of seafarers in the EU context: Challenges and opportunities', Marine Policy 32 (2008) 1043–1049, at page 1046.

⁵³ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast), OJ L 131/57, 28.5.2009, p. 57.

⁵⁴ UNCTAD Review of Maritime Transport 2009 United Nations, New York & Geneva, 2009.

The MRAG study calculates that the simple change of the country of registration has an annual cost around \$14,000, i.e. around 10,000 euros per year. This concerns only the direct administrative costs (initial registration fee, and yearly fees paid to the new country of registration).

Nevertheless, the real costs of flagging-out, although difficult to monetise, include more elements than just the registration costs. It should be noted, for instance, that holding a flag of a Member State brings benefits, which are difficult to monetise but are important for shipowners. According to the MRAG study, the benefits are mainly the following: increased protection from EU naval forces, lower costs for insurance, market premium due to assurances of reliability and quality, better access and lower prices for loans and mortgages and higher prestige in the market attached to an EU flag.

In the present context, the benefits of any policy option have to be measured against this risk of flagging-out, which should be minimised. It must be avoided that an initiative aiming at improving the working conditions of European seafarers ends up as reducing not only their working conditions but also their safety. A high risk of flagging out associated with a policy option would mean that the perception of the negative competitive impact of that policy option outweighs the perceived benefits of flying the flag of a Member State. An actual flagging out would also trigger a further reduction in the number of EU seafarers. As a consequence, one of the objectives of the proposed EU action would be jeopardised.

5.2. The experience in Member States

As table 2 clearly shows, many Member States have chosen not to use the possibility to exclude or derogate seafarers from the scope of the Directives. This means that options 2, 3 and 4 are, to a certain extent, already applied in some Member States, notably some Member States with important maritime sectors.

In order to determine whether the application of the Directives had any measurable impact, notably on the flagging-out of vessels, the table in Annex 2 presents the evolution on the number of vessels and gross tonnage per Member States during a period of 10 years.

It should be emphasised that this evolution has probably been determined by factors other than the exclusions from labour law Directives. Those factors include trends and vicissitudes of national/global economies and the adoption of national measures aimed to boost the maritime industry (such as tonnage taxes and tax exemptions for seafarers). In consequence, for the purposes of the present exercise, it should be checked whether the exclusions from labour law Directives has prevented this kind of measures from producing their positive effects.

In Spain (where pro-shipping measures were introduced during this time-span), the gross tonnage of the national fleet increased by 40.4% between 2001 and 2011. In France (where the same occurred), for the same period, the increase was 40.2%. Both France and Spain apply all the Directives (except the Posting of Workers Directive) to the maritime sector. On the other hand, in Greece, between 2001 and 2011, the gross tonnage of national fleet increased by 34%. In Cyprus, between 2003 and 2011, the gross tonnage increased by 0.5%. Both Greece and Cyprus exclude the maritime sector from the scope of national law transposing the Directives.

In conclusion, the experience in the last decade does not corroborate the argument that the application of the Directives could lead to a flagging-out of vessels under third countries flags.

For the preparation of the present report, the Commission has requested Member States and social partners to help in identifying the impacts of their national law. A detailed questionnaire was sent to all Member states and to sectoral employers' and employees' organisations. The Commission services received replies from both sides of the industry and from 20 Member States (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, LT, LV, MT, PL, PT, RO, SE, SI and UK). The information received is detailed in the Annex dealing with the consultations of stakeholders (see Annex 3).

The replies can be summarized by underlying that Member States having made the option to apply the provisions of the Directives to seafarers are unanimous concerning the estimation that this does not appear to represent significant additional costs compared to on-shore companies. None of these Member States is aware of any negative impact, notably in case of the sale of a vessel.

On the contrary, 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 important additional costs. The Member States at stake do not give any indication as for the quantification of the additional costs.

This allows concluding that since the implementation of the Directives, the position of the Member States regarding the appropriateness of the exclusions has not evolved significantly.

5.3. Insolvency Directive

5.3.1. Who is affected by the exclusion?

Three Member States have excluded share fishermen from the scope of national law transposing the Directive: Cyprus, Greece and Malta. It should be noted that in Ireland and in the United Kingdom, the provisions on the protection against employers' insolvency are not applicable to share fishermen because they are considered by law and/or by an established case law as self-employed workers. Therefore, the suppression of the exclusion would have no impact on Ireland and the United Kingdom.

There are 26,386 workers excluded from the scope of the Directive, assuming that all fishermen in those Member States are share fishermen (it is therefore an overestimation).

The proportion of fishermen excluded from the protection granted by the Directive amounts to 16.7% of the total number of fishermen in Europe.

5.3.2. Economic and social impacts

In Cyprus, a special Fund has been created, which is managed by a Council consisting of members of the Social Insurance Department. When it was set up, the Fund received a payment of CYP 1,000,000 (approx. EUR 1,724,137) from the Redundancy Fund of the Republic of Cyprus and has since then been receiving monthly contributions from the employers at the rate of 0.2% of gross salaries paid to employees. According to the information received by Cyprus as response to the questionnaire there are currently 500 self-employed fishermen in Cyprus, which would be excluded from the scope of the Directive. Around 248 employees work in

on fishing vessels from which 200 belong to the small scale fisheries and the rest of them to the sector of multipurpose fisheries

In Greece, Law 1836/1989 specifies that the Guarantee Fund is financed in part by employers' contributions and in part by State subsidy from the Labour Ministry budget. Employers contribute with 0.15% of any remuneration paid. Based on the MRAG study, there are 30,196 share fishermen in Greece, which is overestimated as mentioned in paragraph 5.3.1.

In Malta, the Guarantee Fund is financed by the national budget (Consolidated Fund). It was initially endowed with the sum of MTL 250,000i, (EUR 579,722) to be paid out of the Consolidated Fund over a maximum period of five years, at a minimum rate of MTL 50,000 (115,944 euro). There is therefore no specific contribution from employers or employees.

None of these funds presently cover share-fishermen.

In conclusion, in view of the low number of workers concerned (and it is overestimated), the economic impact of the coverage of share fishermen is marginal. In Cyprus and in Greece, employers would need to contribute to the Guarantee Fund, but the contribution is low and the number of workers reduced. In Malta, in view of the reduced number of workers (1,303) concerned, the Guarantee Fund would probably need no reinforcement to cover these workers.

The exclusion of share-fishermen from the national provisions transposing the Insolvency Directive means that share-fishermen do not benefit from the guarantee of payment of any outstanding claims in case of employer's insolvency. There are no statistics on the number of insolvencies in the fishing sector or on the number of fishermen having benefited from the guarantee. There are no elements to suggest that this sector is different from other sectors on that matter.

European social partners, including the employers' organisation, of the fisheries sector are in favour of the suppression of the exclusion.

5.4. European Works Council Directive

5.4.1. *Who is affected by the exclusion?*

Nine Member states have made full use of this derogation, i.e., they do not apply any rule on information and consultation of employees to the merchant navy (see table 2).

The number of workers potentially excluded from the scope of national laws is 159,150, i.e., 48.3% of the total number of seafarers.

Taking into account that the Directive only applies to undertakings and groups with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States, Member States having made use of the exclusion do not seem to host, at present, any company qualifying for the application of the Directive.

5.4.2. *Economic and social impacts*

In order to assess the possible additional costs of applying the EWC Directive to seagoing workers, the MRAG study has chosen two scenarios for illustrative purposes. The scenarios depend on the choice of the company and the availability, or not, if IT technologies, they are not an alternative left to Member States.

The first scenario assumes that one of the large European shipping companies based in Denmark (having more than 1000 workers and 150 in each of at least two Member States) has set up a EWC and is obliged to allow representatives of merchant navy crews to attend.

It is assumed that the EWC member is at sea when a meeting has to be held and is, for example, an officer (as more likely to be European) aboard a vessel about to land in Hong Kong then go to Shanghai.

- Flying back to Copenhagen for the duration of the meeting and then returning (EUR 2000 flight costs although the time during the meeting is not an additional cost since the individual would be spending this time at sea.);
- Flying a replacement to Hong Kong then returning from Shanghai (7 working days at EUR 3,500pm for an officer = EUR 816 and EUR 2000 flight costs)
- Management and administration of the swap-over at the company offices (2 working days at EUR 106 per day)

According to the MRAG study, the total of these costs would be around **EUR 5028 per meeting per participant**. Since the average number of annual plenary meetings (including both ordinary and extraordinary meetings) is 2, and that one of the two representatives would be probably on-shore, the annual costs would amount to EUR 5,028 X 2 = **EUR 10056 per year**.

The second scenario is based on the availability of communication by satellite phone. For a remote meeting by means of satellite phone the Euro 1.50 per minute rate would mean about EUR 500 for dialling into a EWC meeting that took most of the day. Since the participant would be attending in their own time owing to the responsibilities of seagoing duties they would need compensating by up to a day's salary (the week's salary being EUR 816 a day's salary can be estimated at EUR 163), the total cost of remote participation would be EUR 663 per meeting per participant. As for scenario 1, this calculation of the costs needs to be adapted to the reality: average of 2 meetings and great probability that some of the participants are on-shore. The annual cost would then amount to EUR 663 X 2 = **EUR 1326**.

It is important to note that these costs spread over the company and not specific vessels. The companies to which these directives apply are by definition large companies. Thus, for example, Maersk Line of Denmark has more than 500 vessels but only needs to host one EWC. The costs estimated above can therefore be deferred over, say 500 vessels.

Taking into account that the Directive applies to companies having more than 1000 employees, that the number of personnel serving on a vessel is between 20 and 27⁵⁵ and the working time arrangements for seafarers, we can estimate that a maritime company qualifying for the application of the Directive has at least 25 vessels. Therefore, the costs amount to **EUR 603 per vessel per year for Scenario 1** and **EUR 79.5 per vessel under Scenario 2**. In relation to the benchmarks for the risk of flagging out or increasing social costs within cost of operation, these are not significant.

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See "Ship Operating Costs 2009-2010", Published by Nigel Gardiner, Drewry Publishing, July 2009, p. 37, figure 2.5.

In any case, it is important to underline that these are the costs for companies qualifying for the application of the Directive (+ 1000 employees) and not for all the companies.

Furthermore, it should also be underlined that not all companies that qualify effectively have EWC in place. According to ETUI database⁵⁶, there are 2424 companies that fit the criteria in terms of number of employees but only 931 (38.4%) currently operate an EWC. This is so because the introduction of EWC is not automatic but requires either central management initiative or a request from a certain number of employees.

It has proved to be more difficult to quantify benefits for shipping companies.

In the context of the review of the EWC Directive, some elements have been presented. For instance, where active, EWCs contribute to improving corporate governance in large transnational undertakings, a key factor for their competitiveness, and to reducing the negative consequences of unprepared restructuring for both the workers and the territories affected.

All employee representatives consider EWCs to be beneficial (EPEC 2008 survey⁵⁷). Despite the financial and the other non-quantifiable costs of operating a EWC, 57% of the companies with a EWC accept that the benefits of having a EWC outweigh its costs (while 35% consider that costs outweigh benefits and 8% give no clear answer). The reason for this is largely the ability of companies to communicate information regarding company strategy and the rationale for certain decisions to employees, particularly in times of change.

Table 11: Views of involved parties on the benefits associated with the operation of EWCs (EPEC 2008)

	Companies			Employees		
	Agree	Neutral	Disagree	Agree	Neutral	Disagree
Better ability to talk to employee reps from other countries	88%	4%	8%	96%	0%	4%
Better ability to talk directly to group management	79%	10%	10%	91%	4%	4%
Improved understanding of management decisions	82%	10%	8%	76%	15%	10%
Better exchange of information	80%	12%	10%	98%	2%	0%
Improved relations between management and employees	76%	22%	2%	63%	17%	20%
Increased trust	63%	29%	8%	61%	20%	20%
Better corporate culture at European level	62%	28%	11%	73%	22%	5%
More effective decision-making	23%	33%	44%	37%	22%	41%
Enhanced productivity	0%	38%	62%	19%	46%	35%

These benefits, although non-quantifiable, have very concrete impacts upon both workers and companies. For companies, they minimise the risks associated with social unrest in terms of the company's public image as well as costs and delays, which far more than outweighs the operational costs of running a EWC. They reduce resistance to change, support adaptation on the part of workers, contribute to the

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See <http://www.ewcdb.eu/index.php>.

⁵⁷

Study commissioned by the Commission and carried out by European Policy Evaluation Consortium — EPEC — under the coordination of GHK Consulting, see <http://ec.europa.eu/social/BlobServlet?docId=2421&langId=en>.

building of an integrated corporate culture following mergers, convey qualitative root-level information about the company's life to top management, and help in attracting and retaining qualified employees.

The employees' representatives (ETF) are in favour of the suppression of the exclusion. On the other hand, the employer organisation (ECSA) is against the mere suppression of the exclusion and argues that a distinction could be made between seafarers away from home for long periods and seafarers away no longer than 48 hours.

5.5. Information and Consultation Directive

5.5.1. *Who is affected by the exclusion?*

The Directive does not allow Member States to exclude seafarers from the scope of their national law on information and consultation of employees, but only to deviate from the provisions of the Directive through specific provisions on the matter.

Four Member States (Cyprus, Luxembourg, Malta and Romania) have totally excluded seafarers from the scope of their national law, without providing for "particular provisions" on information and consultation. All the other Member States apply the general rules to them or have introduced particular provisions applying to crews of vessels plying the high seas, as allowed by the Directive (Germany, Greece, and the UK) (see Annex 6).

The total exclusion of seafarers is in contradiction with the text of the Directive and this should be dealt with by the infringement procedures, rather than by an amendment of the EU law. For the purpose of the present report, it will be assumed that Member States having excluded seafarers from the Directive will adopt particular provisions applicable to them.

The exact number of workers to whom the provisions of the Directive do not fully apply is impossible to identify since there is no statistical data on how many seafarers from the merchant navy and fishermen "ply the high seas". Furthermore, the directive applies only to undertakings with at least 50 employees or with establishments with at least 20 employees. Taking into account all seafarers and fishermen from the four Member States concerned, independently of the fact that they ply the high seas and irrespective of the size of the company, the universe of workers excluded would amount to a maximum of 94,649 seafarers, i.e., 19.5% of the total of EU27.

5.5.2. *Economic and social impacts*

Merchant Crews

Since this Directive does not allow Member States to exclude seafarers from the scope of national law transposing it, but only to lay down specific provisions on information and consultation, only option 3 could have an economic impact. In any case, this would be more a clarification of the substantive law already in place, rather than a modification of the law.

It can be considered that the scenarios available to enable the rights currently subject to derogation are the same as for those under the EWC Directive, namely the repatriation scenario with a replacement being fielded or the participation by satellite with the workers private time compensated for. The unit costs for these two scenarios will be similar to those under the EWC directive. The difference however is that these costs are now applicable to much smaller enterprises. With a minimum number

of employees of 50 such enterprises may have only two or three vessels each over which to defer the costs..

Since consultation only occurs when needed, it can be assumed that, on average there would be one meeting per year, with two representatives being called back to attend to the meeting. This would bring the annual cost to EUR 10056. Given the much smaller nature of the enterprise, taking a worst case scenario by assuming the enterprise only has two vessels, the costs will be **EUR 5028 per vessel per year**.

Under Scenario 2 costs for participation by satellite the cost is around EUR 663 per meeting per participant. Assuming again one meeting per year and two representatives the potential annual cost would be EUR 1326 which under the worst case two vessel situation would be equivalent to **EUR 663 per vessel per year**.

As mentioned previously, these are maximal costs, since the Directive already imposes Member States to ensure rights to information and consultation. Nevertheless, it could entail some additional costs if the proposal clarifies that workers should benefit from an equivalent level of rights. In any case, the costs mentioned before would be a maximum, which would occur only where no information and consultation is provided for by national law.

As with all improvements in consultation and information exchange there are potential second order downstream benefits which might accrue. Improved relationships may ultimately manifest themselves in new employment relationships or even negotiation on terms and conditions.

As mention above for the EWC Directive, the institution of information and consultation procedures could reduce resistance to change, support adaptation on the part of workers, contribute to the building of an integrated corporate culture following mergers, convey qualitative grass roots-level information about the company's life to senior management, and help in attracting and retaining qualified employees.

The fact that the exclusions from this Directive apply only to larger companies (i.e., those with more than 50 employees or establishments above 20) and to vessels that ply the high seas means that fishing vessels and companies are in practice almost all exempted along with coastal vessels, with some possible exceptions within distant water fishing fleet a few Member States.

For the merchant navy, the employees' representatives (ETF) are in favour of the suppression of the exclusion. On the other hand, the employer organisation (ECSA) argues that there is no need to change the Directive since it already provides that the derogation is subject to particular provisions.

For the fisheries sector, both sides of industry are in favour of the establishment of equivalent specific provisions.

5.6. Collective Redundancies Directive

5.6.1. Who is affected by the exclusion?

The exclusion applies both to the merchant navy and fishing seagoing vessels.

Currently, ten Member States (Belgium, Cyprus, Germany, Denmark, Greece, Ireland, Luxembourg, Latvia, Malta and Slovakia) make use of the possibility to exclude seafarers from the scope of their national law transposing the Directive.

Seventeen Member States do therefore not use this faculty to exclude seafarers from the scope of their national law transposing the Directive.

The number of seafarers potentially excluded from the Directive in the ten Member States is **174343**, representing 35.7% of the total of seafarers in EU27.

The merchant shipping sector is characterised by the systematic use of fixed term employment contracts as opposed to contracts of indefinite duration. It can be assumed that those employed on the basis of fixed term contracts are substantially less impacted by the exclusion since reduction of staff would be achieved by not renewing the contract at the end of the fixed term.

5.6.2. *Economic and social impacts*

According to the MRAG study, the cost of implementing the directive for an employer comes from three sources: the cost of consultation before a sale; the direct cost of the 'cooling off' period and the indirect opportunity cost of having a boat inactive during this period.

For the purpose of this exercise, it is necessary to envisage two possible sub-options:

- a) an obligation on employers to inform and consult when envisaging collective dismissals;
- b) information and consultation obligations plus a cooling-off period of one month for the application of the envisages redundancies.

Sub-option a)

The consultation is assumed to take place between two employers' and two union representatives. The cost of consultation can be taken as a tele – meeting with two employees' representatives, at EUR 1316 per meeting per participant (from Scenario 2 of EWC above), that is **EUR 2632**.

Sub-option b)

The MRAG study then assesses the costs of the "cooling off" period, i.e., the period between the notification of the intention to proceed to collective dismissals and the effective dismissal⁵⁸. Nevertheless, it fails to take into account some elements. First of all, according to Article 4 of the Directive, the deadline of one month can be reduced⁵⁹ by national authorities. Furthermore, due to the high rate of fixed term contracts, it is likely that the vessel is sold at the end of a trip when the employment contracts would come to an end. Finally, if the exclusion of seafarers from the scope of the Transfer of Undertakings is suppressed or reviewed, the sale of a vessel would have to be considered a transfer of an undertaking and therefore no termination of employment contract would be allowed due to the transfer.

Taking into account what has been said previously, the calculation below is in any case overestimated is given as the worse scenario in terms of costs.

⁵⁸ Article 4(1) of the Directive states that: *Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.*

⁵⁹ Article 4(1), second subparagraph: *Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.*

According to the MRAG study, the direct cost of the 'cooling off' period would include one month's wages for the crew⁶⁰. It might be said that, with the vessel in port, the long termers could be immediately redeployed but since this will almost certainly include the senior officers it is more realistic to allow for the payment of the whole crew at the standardised cost of **EUR 39678** per month.

The opportunity cost of having the vessel tied up for a month has been monetised by MRAG by assuming the owners have to charter a vessel to do the job of the vessel tied up or its replacement. The cost of chartering a medium sized vessel has been estimated at \$35000 per day (Stopford 2009). For the present exercise, the opportunity cost is calculated at 25550 euros per day. For a minimum 30 day cooling off period this amounts to an opportunity cost of **EUR 766500**.

The total monthly cost of the one month cooling off period would therefore be, according to the MRAG study, **EUR 811442**.

The Directive establishes a two-stage procedure: information and consultation of workers when the employer is considering a collective dismissal "with a view to reaching an agreement" and a notification to the competent authority which will "seek solutions to the problems raised by the projected collective redundancies". The involvement of workers and their representatives and of the competent authorities can limit the scale of job losses and the longer-term impact on workers. There is no reason why this would not be valid in the maritime sector.

The procedures for information and consultation of the workers contribute to improving corporate governance and to reducing the negative consequences of unprepared restructuring. Companies will benefit from an increased ability to communicate information regarding company strategy and the rationale for certain decisions to employees, particularly in times of change.

5.7. Transfer of Undertakings Directive

5.7.1. Who is affected by the exclusion?

The exclusion applies to seagoing vessels both from the merchant navy and fishing sectors. Ten Member States have made use of the exclusion at national level (Cyprus, Denmark, Hungary, Greece, Ireland, Latvia, Luxembourg, Malta, The Netherlands and Romania). The number of seafarers affected by the exclusion is 199,426, representing **40.9%** of the seafarers in EU27 (47.3% of workers from the merchant navy, 27.5% from fisheries).

5.7.2. Economic and social impacts

It is also necessary to envisage two possible sub-options in order to assess the economic and social impacts of any amendment to the current situation:

a) The Directive would apply to the transfer of a seagoing vessel constituting an undertaking, business or part of an undertaking or business but its Chapter II would not apply when the object of the transfer consists exclusively of one or more seagoing vessels.

b) the Directive would apply entirely to seagoing vessels.

If sub-option a) is considered, the employers' increased cost would only consist of some consultation with the crew. This could be indicated by two tele-meetings with

⁶⁰

The directive permits a reduction in the 30 day notice period, but it also permits such period to be extended. That is why the MRAG Study took 30 days as an average.

the crew as per Scenario 2 for the EWC Directive, which would amount to an additional cost of around EUR 2632.

It should be noted that this would be the cost for any transaction of a vessel, not the costs for each company.

In the case of sub-option b), there would be a high indirect opportunity cost if a vessel, as an undertaking, would have to be sold complete with crew. In a competitive market for the buying and selling of vessels this would put the EU seller at a great competitive disadvantage. To monetise this opportunity cost, it could be assumed that the vessel would have to be sold at a discounted price to compensate for having to include the crew which would be inconvenient and not usual practice. Taking the discount to be offered at say 5% of the sale price, approximately half the operational manning costs, for a vessel worth EUR 30 million, this could amount to an opportunity cost of EUR 1.5 million.

5.8. Posting of Workers Directive

5.8.1. Who is affected by the exclusion?

Almost all Member States have made use of this exclusion and therefore do not apply their national laws on the posting of workers to seafarers. The exceptions are Austria, the Czech Republic, the Netherlands, Portugal, Slovenia and Slovakia. Malta has adopted specific provisions for this sector. The number of seafarers from merchant navy affected by the exclusion is 267,976, representing 81.3% of the seafarers in EU27.

5.8.2. Economic and social impacts

It should be recalled that the legislative package adopted in March 2012 by the European Commission leaves unchanged the provisions of the Posting of Workers Directive and thus the exclusion of seagoing vessels.

Strictly speaking all seafarers are subject to exclusion from this directive but it is very difficult to carry out any quantitative analysis because the terms of the directive use solely land-based premises which are conceptually difficult to apply to the maritime situation.

The impacts of this exclusion are very difficult to discern largely because addressing this exclusion with the present parameters of the directive is not technically feasible. The specific focus on postings to the territory of a Member State makes it difficult to assess the impacts of an exclusion in terms of merchant navy crews which is all but impossible: a vessel is not the territory of a Member State.

In practice, options 2 and 3 would be inapplicable to the sector due to the link with the territory of a Member State.

Option 4 could be implemented for the sake of harmonisation and but it would require fundamental changes in the text of the Directive. As mentioned in point 2.1.6, situations of posting of workers seem to be rare in the sector.

6. COMPARING THE OPTIONS

For every Directive and for the four policy options, the following elements are taken into account, each being assessed from zero to three, with a negative (-) or positive (+) impact, on the basis of the analysis carried out in the previous section.

- Ability to achieve the specific objectives:

- Improve the level of protection of the rights protected under the EU Charter of Fundamental Rights, in particular by assessing whether a different treatment is objectively justified by the characteristics of the sector and, if not by enhancing the rights of workers in the seafaring professions, in order to bring them up to the standard enjoyed by workers on shore;
 - Contribute to bringing more EU young citizens into jobs in the merchant navy and fishing sectors, by making them more attractive compared to on shore jobs and to improving the retention of seafarers in the profession.;
- Likely economic and social impact
 - Risk of flagging-out.

6.1. Insolvency Directive

PO	Specific objectives				Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights, notably those protected by the EU Charter Ensure compatibility with the EU Charter of Fundamental Rights	Contribute to bring more EU young citizens into maritime jobs				
1	---	---			Number of EU seafarers continue decreasing	None
2	+++ Would increase the protection in case of insolvency	++ Better protection would be beneficial			-/+ Impacts limited: low number of workers and MS and low contribution	None, it only concerns share fishermen
3	+++ Would increase the protection in case of insolvency	+++ Equalisation of rights would have positive impact			-/+ Impacts limited: low number of workers and MS and low contribution	None Concerns only share fishermen, not merchant navy.
4	++/+++ Would improve the current	++ Positive, depending the actual			-/+ Impacts limited: low	None Concerns only share fishermen,

	situation, to an extend depending on the actual provisions	provisions			number of workers and MS and low contribution	not merchant navy.
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For the Insolvency Directive, policy option 1 will not meet any of the objectives. All the other options will allow to meet the three objectives and all have a reduced economic impact, due to the fact that only shared fishermen are concerned and only in three Member States. Furthermore, the rate of contribution of employers is low (0.15% of the remuneration in Greece, 0.2% in Cyprus) or inexistent (in Malta).

Policy options 2 to 4 are therefore very similar in terms of capacity to reach the objectives, as well as in terms of economic impacts. Nevertheless, policy option 3 is the most effective as far as the attractiveness of the profession is concerned, without an increase of costs compared to options 2 or 4.

6.2. European Works Council Directive

PO	Specific objectives				Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights, notably those protected by the EU Charter Ensure compatibility with the EU Charter of Fundamental Rights	Contribute to bring more EU young citizens into maritime jobs				
1	--- No improvement	--- No progress			- No additional costs but no benefits from the setting up of EWC	None No additional risk of flagging-out
2	+++ Would improve current situation	++ Approximation of legal situation would have positive impact			- Reduced costs, limited to big companies	Low risk since reduced economic costs
3	+++ Full application of the Directive would ensure maximal protection	+++ Same rights would have the highest positive impact			- Reduced costs, limited to big companies	Low risk since reduced economic costs
4	++/+++ Would improve current situation, to an extent depending on the actual provisions	++/+++ Improvement would have positive impact			-+ Adapted provisions might have lower or higher costs depending on the actual provisions	Low risk since reduced economic costs

For the Works Council Directive, option 1 is clearly the only option which would meet no objective.

One common feature of options 2 - 4 is the low economic costs due to the fact that this Directive only applies to big companies (undertakings with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States) and not automatically: the introduction of a EWC requires a central management initiative or a request from employees. Policy option 3 would be more effective in contributing to the attractiveness of maritime jobs, since the perception of the different levels of protection is a central element of the problem.

6.3. Information and Consultation Directive

PO	Specific objectives				Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights, notably those protected by the EU Charter Ensure compatibility with the EU Charter of Fundamental Rights	Contribute to bring more EU young citizens into maritime jobs				
1	++ Current Directive already ensures rights to information and consultation	- Would not change current situation			None	None
2	+++ Clarification of the text would allow better implementation	++ Clarification would be beneficial			None	None No risk since no additional costs
3	Not applicable	Not applicable			Not applicable	Not applicable
4	None Already in place	None Already in place			None Already in place	None Already in place

The Information and Consultation Directive is in a peculiar position as far as this assessment is concerned. It does not exclude seafarers from its scope; it merely allows Member States to derogate from its provisions "through particular provisions applicable to the crews of vessels plying the high seas". Therefore, Member States may deviate from the general rules of the Directive, but need to have in place specific rules on information and consultation of seafarers.

Option 3 is simply not applicable concerning this Directive and option 4 is already implemented. Nevertheless, the provisions of the Directive could be made clearer on the fact that an equivalent level of protection should be granted (policy option 2).

6.4. Collective Redundancies Directive

PO	Specific objectives				Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights,	Contribute to bring more EU young				

	notably those protected by the EU Charter Ensure compatibility with the EU Charter of Fundamental Rights	citizens into maritime jobs				
1	--- No change to current exclusion	--- No change to current exclusion			None	None
2	+++ Would improve the protection in case of collective dismissal	++ Improved protection in case of collective dismissal would have positive impact			--- High costs notably in case of the sale of the vessel	--- Very high risk
3	+++ Would improve the protection in case of collective dismissal	+++ Improved protection in case of collective dismissal would have positive impact			--- High costs notably in case of the sale of the vessel	--- Very high risk
4 a)	++ Would improve current situation	++ Any approximation of the legal situation is positive			- Limited costs	- Low risk
4b)	Would reach fully the objective	+++ Equivalence with on-shore would have the highest positive impact			--- Costs would be high	--- Very high risk

Unlike a factory, it is not possible for a shipowner to decide to reduce the number of seafarers on-board: the number of seafarers is regulated by various international conventions. Therefore, a collective redundancy will happen, in most of the cases, when a vessel is to be sold.

Option 1 will meet none of the objectives set for this initiative. Option 3 would have the highest impact, while options 2 and 4 would allow reaching the objectives with lower costs if the nature of the maritime sector is taken into account.

Option 4a will improve the current situation without imposing substantial costs to employers. Option 4b would have high costs, notably in the case of the sale of the vessel. This was also a concern expressed by Member States (see Annex 3). The cost could be limited if the envisaged proposal suppresses "cooling-off" period in the case of a dismissal provoked by the sale of a vessel.

6.5. Transfer of Undertakings Directive

PO	Specific objectives				Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights, notably those protected by the EU Charter Ensure compatibility with the EU Charter of Fundamental Rights	Contribute to bring more EU young citizens into maritime jobs				
1	--- No change to current exclusion	--- No change to current exclusion			None	None
2	+++ Would improve the protection	++ Improved protection would have positive impact			--- High costs notably in case of the sale of the vessel	--- Very high risk
3	+++ Would improve the current level of protection	+++ Improved protection would have positive impact			--- High costs notably in case of the sale of the vessel	--- Very high risk
4a	++ Would improve current situation	++ Any approximation of the legal situation is positive			- Limited costs	- Low risk

4b	+++ Would reach fully the objective	+++ Equivalence with on-shore would have the highest positive impact			--- Very high costs	--- Very high risk
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The impacts of the different policy options are very much influenced by the fact that, unlike a factory, a vessel is sold frequently and rapidly. If the Directive applies in such a case, the market price of the vessel could be negatively impacted.

In this context, PO 1 has no additional costs but is unable to reach any of the objectives. On the other hand, PO 3 would have a potential very high cost and a very high risk of flagging-out.

Option 4a will have limited costs. It would improve the current situation in terms of information and consultation but would not ensure an equivalent level of protection. On the other hand, option 4b would have high costs in case of the sale of the vessel.

6.6. Posting of Workers Directive

PO	Specific objectives		Economic and social impacts	Additional risk of flagging-out
	Improve and expand rights, notably those protected by the EU Charter	Contribute to bring more EU young citizens into maritime jobs		
1	-	-	None	None
2	Inapplicable	Inapplicable	Inapplicable	Inapplicable
3	Inapplicable	Inapplicable	Inapplicable	Inapplicable
4	++ Would require substantial amendments, low impact in practice	+ Approximation of law could be beneficial	- Costs low, posting is rare in the sector	- Low risk

There is a broad consensus among stakeholders on two points: that the Directive is inapplicable as such to the sector without major amendments, notably to the definition of "posting", and that in practice situations of posting within the meaning of the Directive are extremely rare, if any, in the maritime sector.

6.7. Ranking of the options and their cost

This initiative deals with six labour law Directives and the ranking of the policy options will need to be set for each of them, since the best approach could be different from a Directive to another.

Due to a different formulation of each one of the exclusions, they have different impacts (diversification of fleets and their different structure in the Member States, limitation to particular situations such as insolvency or only when plying the high seas etc.), as well as personal scopes of application (seafarers/fishermen, size or situation of the enterprise, location of a vessel etc.), the costs which will potentially derive from the proposed policy option mix are not comparable. Therefore, instead of presenting an overall estimate, the main drivers of the potential cost have been analysed below for the preferred policy option regarding each one of the Directives.

An important number of the MS have made a very limited use to no-use of the exclusions. Taking into account the information in Table 2 and disregarding Posting of Workers Directive, which remains unchanged:

- (a) There are 8 Member States who have not excluded seafarers from any of the Directives.
- (b) Two others used a single exclusion (transfer of undertakings) while providing for an equivalent level of protection.
- (c) Finally 6 more MS used a single exclusion without providing for an equivalent level of protection.

In conclusion, we can state that 16 Member States have made use of none or only one exclusion. An average of 2 exclusions are used by the Member States who decided to make use of them (see Annex 6).

For the Insolvency Directive, policy options 2, 3 and 4 have very similar economic impact and none has any risk in terms of flagging-out. Policy option 3 (suppression of the exclusion) is the more effective and the most likely to contribute to attract more people into seafaring jobs. The limited number of workers concerned in only two countries suggests that the cost of implementing the policy option proposed should not be significant and could probably be assumed by the existing structures. Furthermore, the costs of each one of the policy actions proposed, except non-action, are comparable. Furthermore, nothing suggests that the implementation of the Directive concerning share fisherman or contributions to be paid by employers would be higher than in other sectors, currently covered by the Directive.

As far as the European Works Council is concerned, policy option 3 would have the highest positive impact on the attractiveness of the sector while the economic impact remains low for all policy options.

The assessment on the Information and Consultation Directive is limited since policy option 3 (suppression of exclusion) is not applicable (no exclusion is provided) and policy option 4 is already implemented, although a clarification of the text might be useful. In view of the current situation in Member States, requiring an equivalent level of protection under policy option 2 would contribute to reach the objectives in terms of improvement of rights and attractiveness without imposing additional costs.

As far as the Collective Redundancies is concerned, policy option 1 would meet none of the objectives set for the initiative. Policy option 4a would meet the objectives without imposing too high costs, provided the specific situation of the sale of the

vessel is taken into account. The option chosen involves notably lower costs in comparison with any other option, except non-action. This option would address the concerns expressed by some Member States.

The same applies to the Transfer of Undertakings Directive; policy option 4a is the only one that could improve the current situation without imposing disproportionate additional costs. The cost involved will in broad lines be similar to the estimate obtained regarding Collective Redundancies Directive. This option will address the concerns expressed by some stakeholders concerning the costs.

Finally, no proper assessment can be made concerning the Posting of Workers Directive, which should remain unchanged.

In conclusion, the preferred option for this initiative would be a combination of the four different policy options, according to 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 4a (specific provisions) for the Collective Redundancies Directive;
- Policy option 4a (specific provisions) for the Transfer of Undertakings Directive;
- Policy option 1 (no action) for the Posting of Workers Directive.

The situation can be summarised as follows:

Directive	Preferred policy option	Socio-economic impact	Economic impact of the preferred option in comparison with other policy options taken into account (except no action)	Number of Member States currently making use of the exclusions
Insolvency Directive	3 (suppression)	-/+ Impacts limited: low number of workers and MS and low contributio	Comparable economic impact of all policy options. Not higher than in other sectors.	2 + 2 where share fishermen are excluded as self-employed

		n		
European Works Council Directive	3 (suppression)	- Limited costs, limited to big companies · Voluntary and flexible mechanism.	Reduced, comparable cost of all policy options.	10 (none of them currently hosting companies qualifying for EWCs)
Information and Consultation Directive	2 (equivalent level of protection)	None	No impact in all applicable policy options (Option 3 is not applicable and Option 4 is already in place)	4 MS without providing for an equivalent level of protection – irregular situation under the current directive
Collective Redundancies Directive	4a (specific provisions)	- Limited costs	High to very high cost of any other policy option except the preferred option	9
Transfer of Undertakings Directive	4a (specific provisions)	- Limited costs	High to very high cost of any other policy option except the	9 MS + 2 MS providing for an equivalent level of protection
Posting of Workers Directive	1 (no action)	No cost	N/A	N/A

7. MONITORING AND EVALUATION

The present initiative will result slight amendments to Directives currently in force. As a consequence, monitoring/evaluation mechanisms and indicators already in place under each relevant Directive can continue to be used regarding the amendments introduced by the new Directive.

The Commission will monitor in particular the impact of the new Directive on two issues: the phenomenon of flagging-out and the level of employment of EU seafarers. On the flagging-out, the evolution of the fleet under a flag of an EU Member State will give an accurate view of the phenomenon. Data is available on an annual basis on the gross tonnage of the fleet by national flag: the follow-up of this indicator will provide a clear indication of the trend of flagging-out. Movements in the level of employment will be more difficult to monitor, at least if the collection of data at national level is not improved. If the recommendations of the Task Force on Maritime Employment and Competitiveness on the improvement of data collection are not implemented, recourse to external expertise will be needed.

The Commission will cover these two issues in the reports provided for by the current Directives or, when no report is foreseen in current texts, will provide for a separate reporting exercise.

The Commission also supports the request for improving "the availability of comparable data"⁶¹ and will cooperate with Member States and social partners in order to improve the availability of data which would allow for an assessment of the impact of the Directive on this matter, recurring to an external expertise when necessary.

In view of the limited formal changes to be made in existing Directives, the transposition of the Directive by Member States should not be problematic. The Commission aims at a rate of compliance close to 100% within three years after transposition. The substance of the rights is integrated in all national legal framework, the changes consist mainly in extending the personal scope of the law, to include seafarers.

⁶¹ See the Report of the Task Force on Maritime Employment, p. 21.

8. ANNEXES

Annex 1: Number of seafarers according to different sources

	MS	MRAG ⁶²	SULPICE 2011 ⁶³	ECOTEC 2006 ⁶⁴	ECORYS 2009 ⁶⁵	Others
AT		17		1,056		
BE	879	5,232	590	3,600	20,997	
BU		1,076	33,269		13,175	18,796 ⁶⁶
CY	21,000	24,200	3,421	24,200	701 ⁶⁷	
CZ		-		967		
DE	15,179	16,211	10,253	10,801	8,552 ⁶⁸	9,400 ⁶⁹ 6,767 ⁷⁰
DK	9,200	11,465	3,938 ⁷¹	14,815	18,244	9,611 ⁷²
EE	6,250	459	9,000	4,500	7,167 ⁷³	
EL	44,800	45,190	12,963	30,920	18,954	21,526 ⁷⁴
ES	12,138	3,019	7,043	8,000	26,682	

⁶² 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, available here:

⁶³ Guy Sulpice, Study on EU seafarers employment, May 2011, available here: <http://ec.europa.eu/transport/maritime/studies/doc/2011-05-20-seafarers-employment.pdf>.

⁶⁴ ECOTEC, *An exhaustive analysis of employment trends in all sectors related to sea or using sea resources - Final report for the European Commission, DG Fisheries and Maritime Affairs*, September 2006, available here: http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/main_report_en.pdf.

⁶⁵ ECORYS, *Study on the Labour Market and Employment Conditions in Intra-Community Regular Maritime Transport Services Carried out by Ships under Member States' or Third Countries' Flags*, December 2009, available here: <https://webgate.ec.europa.eu/maritimeforum/system/files/DG%20EMPL%20-%20Study%20on%20maritime%20labour.pdf>

⁶⁶ Bulgarian Ministry of Transport, quoted in Sulpice, p. 52.

⁶⁷ Only ratings, no figures available for officers.

⁶⁸ Only officers.

⁶⁹ Based on German Social Assurance System, quoted in Sulpice, p. 64.

⁷⁰ Flotten Kommando 2010, quoted in Sulpice, p. 64.

⁷¹ Only nationals.

⁷² Danish Maritime Authority, *Facts about shipping 2011*, p. 18 (<http://www.dma.dk/SiteCollectionDocuments/Publikationer/Facts-about-shipping/FoS-2011-engelsk-FINAL-MASTER.pdf>). It comprises nationals and non-nationals.

⁷³ Only officers.

⁷⁴ National Statistics Bureau 2006, includes national and non-national seafarers, quoted in Sulpice, p. 68.

FI	9,175	1,790	4,200	11,295	1,196	
FR	23,060	7,021	13,696	13,632	29,243	
HU		-		250		
IE		150	3,112	700		
IT		16,238	20,950	34,480	16,410	21,700 ⁷⁵
LT	1,204	413	5,395	11,832	5,682	6,766 ⁷⁶
LU		784	4,436	1,700		
LV	500	266	7,892	18,842	15,760	11,782 ⁷⁷
MT	43,000	38,159	2,436	119	131	
NL		6,920	3,574	19,850	23,297	13,150 ⁷⁸
PL	25,000	91	22,669	35,000	20,327	40,000 ⁷⁹ 30,000 ⁸⁰
PT		1,182	2,221	3,206	5,000	
RO		187	24,343		25,553	30,682 ⁸¹
SE	13,997	5,034	10,923	14,000	9,876	10,119 ⁸²
SI	300	-	644	1,443	1,443	
SK		290	576	505		
UK	27,000	18,544	23,193	26,520	28,439	38,523 ⁸³
TOTAL	267,976	185,104	206,968	292,233	268,390	188,799

⁷⁵ Confitarma 2010, including national and non-national seafarers, quoted in Suplice, p. 73.
⁷⁶ Lithuanian MSA 2010, including national and non-national seafarers, quoted in Suplice, p. 78.
⁷⁷ Latvian Seamen Registry 2010, quoted in Suplice, p. 75.
⁷⁸ Nederlandse Maritime Cluster 209, including national and non-national seafarers, quoted in Suplice, p. 83.
⁷⁹ Ministry of Transport, quoted in Suplice, p. 88.
⁸⁰ Drewry Pal 2009, quoted in Suplice, p. 88.
⁸¹ Ministry of Transport, quoted in Suplice, p. 92.
⁸² Swedish Statistics Bureau, including national and non-national seafarers, quoted in Suplice, p. 96.
⁸³ UK Statistics Department 2010, including national and non-nationals holding a British Certificate, quoted in Suplice, p. 96.

Annex 2: EU registered commercial fleet by flag

MS	Year	Vessels	GT	Variation
BE	2001	10	7295	
	2002	10	7295	
	2003	41	1382072	
	2004	67	4379044	
	2005	70	3904222	
	2006	73	4165275	
	2007	88	4234138	
	2008	83	4153894	
	2009	182	4177079	
	2010	199	4398923	
	2011	203	4528275	+99,84%
BU	2006	93	852559	
	2007	94	870547	
	2008	73	610126	
	2009	116	675324	
	2010	104	508509	
	2011	100	436625	-48,79%
CY	2003	1062	21559085	
	2004	962	20643714	
	2005	924	19466852	
	2006	881	19047358	
	2007	878	19585095	
	2008	847	19543063	
	2009	1058	21256278	
	2010	1076	21817360	
	2011	1045	21676443	+0,54%
DE	2001	542	6157397	
	2002	500	6396890	
	2003	417	5995761	
	2004	486	9192559	
	2005	523	11155847	
	2006	506	11741753	
	2007	510	13119703	
	2008	585	15248885	
	2009	854	15338852	
	2010	847	15631900	
	2011	820	15505688	+60,23%
DK	2001	449	6.886.624	
	2002	431	7265771	
	2003	393	7403984	
	2004	377	7336118	
	2005	373	8013799	
	2006	374	8692167	
	2007	381	9278834	

	2008	398	10260207	
	2009	639	10956103	
	2010	654	11414459	
	2011	665	11612293	+40,70%
EE	2003	68	336891	
	2004	57	307130	
	2005	49	398808	
	2006	50	420674	
	2007	39	371552	
	2008	33	340642	
	2009	89	437691	
	2010	86	406553	
	2011	85	322644	-4,23%
EL	2001	1274	28383650	
	2002	1325	30397734	
	2003	1298	32305664	
	2004	1276	31779946	
	2005	1245	31380389	
	2006	1218	33107369	
	2007	1244	36572111	
	2008	1272	38902690	
	2009	1552	40976786	
	2010	1562	41922172	
	2011	1582	43063752	+34,09%
ES	2001	233	1693092	
	2002	242	1901254	
	2003	244	2222227	
	2004	226	2272430	
	2005	218	2320797	
	2006	223	2398866	
	2007	217	2443280	
	2008	202	2347225	
	2009	552	2660317	
	2010	547	2863823	
	2011	546	2850428	+40,41%
FI	2001	167	1.414.271	
	2002	166	1508326	
	2003	165	1361045	
	2004	162	1394815	
	2005	156	1349878	
	2006	154	1404414	
	2007	159	1448680	
	2008	159	1413692	
	2009	270	1531816	
	2010	270	1565812	
	2011	264	1553896	+8,99%
FR	2001	195	4.164.052	

	2002	189	4139817	
	2003	192	4419841	
	2004	191	4489708	
	2005	201	5286137	
	2006	162	2436539	
	2007	204	5682484	
	2008	246	6147774	
	2009	591	6450605	
	2010	561	6819183	
	2011	554	6961264	+40,19%
IE	2001	44	227.670	
	2002	45	208812	
	2003	56	398237	
	2004	52	378562	
	2005	42	169667	
	2006	38	109861	
	2007	43	121403	
	2008	43	109364	
	2009	86	173768	
	2010	88	169178	
	2011	91	181447	-20,30%
IT	2001	847	9199516	
	2002	855	9409829	
	2003	858	9918568	
	2004	863	10839764	
	2005	886	11486896	
	2006	913	12500854	
	2007	914	13141394	
	2008	938	14271707	
	2009	1522	16081364	
	2010	1547	17857585	
	2011	1526	18423793	+50,07%
LT	2003	66	378452	
	2004	65	373765	
	2005	63	371594	
	2006	62	391994	
	2007	56	333841	
	2008	56	389818	
	2009	78	344618	
	2010	74	319421	
	2011	76	372768	-15,02%
LU	2001	56	1351547	
	2002	57	1201517	
	2003	41	687409	
	2004	36	382975	
	2005	38	461051	
	2006	42	624058	

	2007	43	634758	
	2008	42	539710	
	2009	125	1189455	
	2010	151	1224735	
	2011	165	1337593	-1,03%
LV	2003	22	99998	
	2004	30	251037	
	2005	33	255027	
	2006	31	196167	
	2007	35	215561	
	2008	35	282930	
	2009	67	205646	
	2010	62	187636	
	2011	60	151561	+34,02%
MT	2003	1248	24754610	
	2004	1168	22991468	
	2005	1208	23505022	
	2006	1256	24818613	
	2007	1435	30882356	
	2008	1517	33508601	
	2009	1674	35798514	
	2010	1791	40617530	
	2011	1853	44941400	+44,92%
NL	2001	783	4965000	
	2002	810	5301000	
	2003	627	4958769	
	2004	582	4917743	
	2005	584	4960683	
	2006	589	5009385	
	2007	631	5600710	
	2008	688	6194787	
	2009	1192	7325561	
	2010	1252	7416145	
	2011	1264	7836717	+36,64%
PL	2003	51	172263	
	2004	51	69937	
	2005	55	78751	
	2006	52	77543	
	2007	53	73858	
	2008	56	80191	
	2009	173	149679	
	2010	173	133889	
	2011	169	94147	-45,35%
PT	2001	168	1070352	
	2002	158	973059	
	2003	163	1115185	
	2004	159	1233081	

	2005	152	1123628	
	2006	160	1076022	
	2007	162	956559	
	2008	165	1062800	
	2009	244	1047658	
	2010	251	1140044	
	2011	244	1105294	+3,16%
RO	2006	41	160144	
	2007	39	151560	
	2008	34	146475	
	2009	138	182634	
	2010	143	159807	
	2011	147	154440	-3,56%
SE	2001	357	2881090	
	2002	352	3163682	
	2003	353	3496775	
	2004	358	3610858	
	2005	350	3655908	
	2006	349	3833976	
	2007	350	4074359	
	2008	339	4244807	
	2009	463	4171032	
	2010	453	4021334	
	2011	435	3652372	+21,11%
SK	2003	8	64500	
	2004	27	127343	
	2005	47	212161	
	2006	53	235512	
	2007	56	234473	
	2008	42	173065	
	2009	37	136063	
	2010	30	79084	
	2011	26	55396	-14,11%
UK	2001	437	5297181	
	2002	517	7662767	
	2003	602	10553934	
	2004	595	10285293	
	2005	603	10745621	
	2006	632	11721831	
	2007	664	13441403	
	2008	703	16122523	
	2009	1409	17986449	
	2010	1403	19243873	
	2011	1362	18817025	+71,85%
EU	2001	6975	95134714	
	2002	7036	100736470	
	2003	9293	152715790	

2004	9047	154332311	
2005	9037	156906387	
2006	9168	161718926	
2007	9732	181667568	
2008	9959	193806632	
2009	15086	209079833	
2010	15299	219848379	+56,73%
2011	13141	205312617	+53,66%

Source: ECSA (European Community Shipowners' Associations), Annual Reports.

Annex 3-: Outcome of the consultations of stakeholders

Consultation of European social partners in accordance with Article 154 TFEU

First-stage consultation

In October 2007, the Commission adopted a Communication launching the first stage consultation of European social partners as provided for in Article 154 TFEU. The Commission stresses its commitment "to improving the Community legal framework for workers in the sea-going vessels" and that "the analysis (...) indicates that their exclusion from the scope of some directives might not be entirely justified insofar as they do not appear to contribute to the application of specific solutions, more adapted to the concrete situation of such workers".

The Commission then asks the European social partners for their views on how to proceed on this issue.

The Commission received replies from the European Community shipowners' Associations (ECSA), the European Transport Workers' Federation (ETF) and a joint response from ETF, EUROPECHE (Association of National Organisations of Fishery Enterprises) and Cogeca (European agri-cooperatives) within the Sectoral Social Dialogue Committee for Maritime Fisheries (SSDC).

The first 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 employees (ETF) were in favour of doing away with all exclusions, the employers (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, concerning the fishery sector, both sides of the industry were in favour of doing away with some of the existing exclusions (in particular, those set out in Directives 2002/74/EC (Insolvency), 98/59/EC (Collective redundancies) and 2001/23/EC (Transfer of undertakings)). They also stressed the need to guarantee equivalent provisions for the entire sector regarding information and consultation rights (Directive 2002/14/EC on information and consultation) and encouraged the Commission to "put all the Member States on an equal footing" in this respect.

Second-stage consultation

In April 2009, the Commission launched the second-stage consultation of the European social partners. The document stressed that the main aim of the review is to improve and expand the rights of workers in the seafaring professions in the EU in order to bring them up to the standard enjoyed by workers on-shore. Taking into account the principles of equality and proportionality, the Commission argued that the exclusions should only be maintained as long as the underlying objective reasons justifying them remain but that, on the other hand, any additional burdens imposed on undertakings once the exclusions are repealed should be limited to what is strictly necessary to ensure the effective exercise of employees' rights.

The Commission received three replies to the second-stage consultation: separate replies from ETF and ECSA concerning the maritime sector and a joint reply from three organisations representing employers and employees, in the framework of the SSDC, for the fishing sector.

ECSA underlines that the maritime sector is already well regulated and recalls the (then) recent adoption of the Directive implementing the social partners' agreement

on the Maritime Labour Convention. ECSA does not believe that a straight removal of any of the existing exclusions or derogations is justified, but would be prepared to discuss other possible ways ahead. On each individual Directive, ECSA's position is as follows. On the European Works Council Directive, ECSA considers that it would not be realistic to apply any rules to seafarers that require their physical presence at meetings or elections. ECSA suggests that a distinction is made between seafarers away from their home base for many months at a time and shipping services where the seafarer is away no longer than 48 hours, the latter being able to serve as representatives of the seafarers. According to ECSA, there is no reason to amend the Information and Consultation Directive since this Directive already provides that the derogation is subject to the adoption of particular provisions. On the Insolvency Directive, ECSA considers that there is no need to adapt the Directive. On the Collective Redundancies Directive, ECSA draws the attention to the specificities of the sector, notably due to the fact that ships are sold and bought frequently. On the Transfer of Undertakings Directive, again, ECSA considers that "if a ship is sold and changes flag the legal regime will change to that of the new flag. It is consequently not possible for seafarers to have a right to maintain the same employment conditions made by the former owner without considerable legal confusion and uncertainty resulting". Furthermore, it underlines the doubts concerning the application of the Directive to sea-going vessels, taking into account the reference to the "territorial scope of Treaty". Consequently, ECSA believes that the exclusion should not be removed. Finally, as far as the Posting of Workers Directive is concerned, ECSA considers it essential that seafarers continue to be excluded from the scope of the Directive.

The organisation representing employees, the European Transport Workers' Federation (ETF) reiterates its views that the current exclusions or derogations are unjustified and that there is no compelling reason to exclude seafarers from the provisions of the Directives. ETF considers that the exclusions and derogations should be suppressed, but with certain nuances for the Directive on Posting of Workers. In this case, ETF, in view of "the restrictive interpretation the ECJ gave in some recent cases", supports the inclusion of seafarers within the scope of the Directive on condition that the Directive is revised.

Contrary to the maritime sector, the social partners of the fishing sector sent to the Commission a joint reply, agreed within the SSDC. The SSDC supports the elimination of all the exclusions in force or the establishment of equivalent specific provisions.

Other stakeholders: replies from Member States to the questionnaire (December 2011)

Estonia states that the costs of applying the Insolvency Directive, the Information and Consultation Directive, the Collective Redundancies Directive and the Transfer of Undertakings Directive to seafarers have not been different compared to on-shore companies.

Spain, as far as the EWC Directive is concerned, underlines that no agreement for the setting up of a European Works Council in the maritime sector has been notified. Although there is therefore no practical experience, Spain states that there is no reason to believe that, for an institution like the European Works Council, which aims at informing and consulting workers based in different countries, the costs are to be substantially different in the case of off-shore workers. The same applies to the

Information and Consultation Directive, for which Spain has no evidence of higher costs for the maritime sector compared to land based companies. Spain has no data on possible additional costs to maritime company due to the application of the rules of the Collective Dismissals and Transfer of Undertakings Directives.

Finland applies to seafarers almost all the concerned Directives. According to national authorities, no differences in the cost of applying the Directives to seafarers have been reported comparatively to on-shore companies. Finland explains notably that the sale of a vessel is considered to be a business transfer and it has to be handled according to the rules applicable to the transfer of undertakings, notably on the information and consultation of employees' representatives. According to Finland, national rules have no impact on the value of the vessel.

France recognises that the information and consultation obligations stemming from labour law Directives can have additional costs to maritime companies, but underlines that this can also be the case for certain on-shore companies. France applies the Directives at stake to sea-going personnel and has no information on any negative impact on the value of vessels. It nevertheless underlines that the provisions of the Transfer of Undertakings Directive can be difficult to apply when a vessel is sold and registered under a third country's flag, since the rules can only apply when two Member States are concerned.

The UK applies national laws transposing the EWC Directive and the Information and Consultation Directive to seafarers but employees plying the high seas do not have the right to stand or act as an employee's representative. The UK considers that whilst it may be possible to introduce ICT solutions to help merchant crew members fulfil their duties as employee's representatives, this would bear a disproportionate cost to the employer. The UK also states that the application of the Transfer of Undertakings Directive to seafarers had no impact on the transfer of ownership of vessels.

Member States having excluded seafarers from the scope of their national law transposing the Directives were asked to detail the main obstacles to their coverage, as well as the additional costs that maritime sector would face.

Cyprus indicates that the European Works Council Directive and the Collective Redundancies Directive have been made for application to shore workers. Therefore, they could not apply to seafarers without fundamental changes. Cyprus gives no information about possible additional costs.

Lithuania argues that applying the Information and Consultation Directive "would be costly for ship owners. One Inmarsat used minute costs about 1,1 USD". Lithuania also argues that starting a process of information in view of a collective dismissal "might have negative impact on seafarers".

Latvia considers that the provisions of the Collective Redundancies Directive "cannot be applied to collective redundancies of the crews of seagoing vessels because of specific character of seafarers' employment (...) the seafarer's job is related to a particular ship. In the event of termination or interruption of seafarer's employment contract also ship safety and human safety should be taken into account".

Romania does not seem to oppose to the amendment of the Collective Redundancies Directive but considers that this would require "a detailed analysis of existing conditions in the shipping sector".

Belgium states that the Collective Redundancies Directive does not apply to seagoing fishermen and seafarers from the merchant navy because they are always under fixed term employment contracts or, as far as fishermen are concerned, employment contracts for the duration of the trip.

In their response, Danish national authorities stressed the working conditions of seafarers should be established by means of global regulation due to the global nature of the business. Denmark explains that the national law transposing the European Works Council Directive lays down that crew members of merchant ships cannot be elected as members of the special negotiating body or of the European Works Council. As for the Collective Redundancies Directive and the Transfer of Undertakings Directive, Denmark stresses that seafarers do not work within the territory of a Member State.

Greece reminds that the specific nature of maritime transport should be taken into consideration and recalls that seafarers spend only a small period of time working on the same ship or for the same company and that issues like organisation of work or staffing levels do not derive from an employer's decision but are essentially imposed by national and international maritime legislation. On the EWC Directive, Greece considers it to be inapplicable to the maritime sector "since nearly all Greek seagoing vessels never approach Greek ports", inducing considerable travel costs if it was to be applied. Nevertheless, Greece states that no company operating in Greece meets the requirements of the Directive in terms of number of workers in order to be applied.

Concerning the Collective Redundancies Directive, Greece argues that it is not possible to apply its provisions to the maritime sector due to the existing practices in ocean-going shipping. For example, a ship can be sold in a short time, making it impossible or extremely costly, to respect the deadlines set by the Directive.

Malta considers that the suppression of the exclusions could have a significant impact on Malta as a flag State. Malta is of the view that, given the globalised nature of the maritime industry, any regulation must be done through global and not regional organisations.

Malta considers that the application of the Insolvency Directive to share fishermen will prove to be too onerous for small scale enterprises and will most likely accelerate the decline of the industry. On the EWC Directive, Malta considers that its application is not realistic for a sector whose turnover of employees is high and with many domiciled outside the EU. The same reasoning is also valid for the Information and Consultation Directive. On the Collective Redundancies Directive, Malta argues that the exclusion is still relevant, essentially due to the short term employment contracts and the protection granted to seafarers through the traditions of maritime liens.

Annex 4 : The Maritime Labour Convention 2006

The 94th Session of the International Labour Conference, in February 2006, adopted the Maritime Labour Convention, 2006 (hereafter "MLC 2006"), an important new international agreement that consolidates almost all of the 70 existing ILO maritime labour instruments in a single globally applicable legal instrument.

The MLC 2006 establishes comprehensive minimum requirements for almost all aspects of working conditions for seafarers including, inter alia, conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection.

It combines rights and principles with specific standards and detailed guidance as to how to implement these standards at the national level.

The MLC 2006 will enter into force on 20 August 2013. When it comes into force and is effectively implemented in all countries with a maritime interest:

- all seafarers, whatever their nationality, serving on a ship to which the Convention applies, whatever flag it flies, will have decent working and living conditions and an ability to have concerns addressed where conditions do not meet the requirements of the Convention;
- various mechanisms in the Convention will serve to ensure, to the greatest extent possible, that the Convention requirements are respected, even on the ships that fly the flag of countries that do not ratify the Convention;
- Governments and shipowners committed to establishing decent working and living conditions for seafarers will have a level playing field with strong protection against unfair competition from substandard ships.

The Convention establishes a comprehensive enforcement and compliance system, based on cooperation among all ratifying States, which will ensure that decent working conditions, once certified by a flag State, are continuously maintained, no matter where the ship travels.

Implementation at EU level

Following the adoption of the Maritime Labour Convention 2006, the Commission has consulted the European social partners on the advisability of developing the existing Community acquis by adapting, consolidating or supplementing it in view of the Maritime Labour Convention 2006.

The sectoral European social partners (Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) informed the Commission of their wish to enter into negotiations in accordance with Article 154(4) TFEU.

On 19 May 2008, the said organisations wishing to help create of a global level playing field throughout the maritime industry concluded an Agreement on the Maritime Labour Convention, 2006 and jointly asked the Commission to implement it by a Council decision, under Article 155(2) TFEU.

On 16 February 2009, the Council adopted Directive 2009/13/EC⁸⁴ implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the

⁸⁴ Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, JO L 124/30, p. 30.

European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC.

The Directive enters into force on the date of entry into force of the Maritime Labour Convention, 2006 and should be transposed into national law not later than 12 months after the date of entry into force of the Directive.

The main provisions of the Directive and of the Agreement taken up from the Maritime Labour Convention are as follows:

- 1.1: minimum age
- 1.2: medical certificate
- 1.3: training & qualifications
- 2.1: seafarer's employment agreements
- 2.3: hours of work
- 2.4: entitlement to leave
- 2.5: repatriation
- 2.6: seafarer compensation for ship's loss or foundering
- 2.7: manning levels
- 2.8: employment in the maritime sector
- 3.1: accommodation & recreational facilities (only provisions on mosquitoes devices, (standard 3.1§16), recreational facilities (S3.1§17), inspection of hygiene conditions (S3.1§18)
- 3.2: food and catering
- 4.1: medical care on board ship and ashore
- 4.2: shipowners' liability
- 4.3: health and safety protection and accident prevention (only references to general obligations of states and to international instruments)
- 4.4: access to shore-based welfare facilities.

Annex 5: Past evolution in numbers of EU seafarers (2000 – 2010)

COUNTRY									
	2010	2000	Diff	2010	2000	Diff	2010	2000	Diff
	OFFICERS			RATINGS			TOTAL		
BELGIUM	498	546	-48	92	133	-41	590	679	-89
BULGARIA	10 890	2 075	8 815	22 379	3 072	19 307	33 269	5 147	28 122
CYPRUS	2 907	50	2 857	514	1 950	-1 436	3 421	2 000	1 421
DENMARK	2 762	5 353	-2 591	1 176	4 522	-3 346	3 938	9 875	-5 937
ESTONIA	2 700	2 152	548	6 300	7 000	-700	9 000	9 152	-152
GERMANY	3 997	6 021	-2 024	6 356	8 462	-2 106	10 353	14 483	-4 130
GREECE	9 993	17 000	-7 007	2 970	15 500	-12 530	12 963	32 500	-19 537
FINLAND	3 000	4 000	-1 000	1 200	6 000	-4 800	4 200	10 000	-5 800
FRANCE	4 568	2 833	1 735	9 128	6 595	2 533	13 696	9 428	4 268
IRISH REPUBLIC	1 510	1 452	58	1 602	2 089	-487	3 112	3 541	-429
ITALY	9 560	9 500	60	11 390	14 000	-2 610	20 950	23 500	-2 550
LATVIA	5 509	6 170	-661	2 383	8 135	-5 752	7 892	14 305	-6 413
LUXEMBOURG	2 272	514	1 758	2 164	465	1 699	4 436	979	3 457
NETHERLANDS	3 014	2 707	307	560	5 937	-5 377	3 574	8 644	-5 070
NORWAY	16 082	12 000	4 082	7 300	10 200	-2 900	23 382	22 200	1 182
POLAND	17 923	5 944	11 979	4 746	6 162	-1 416	22 669	12 106	10 563
PORTUGAL	419	419	0	1 802	1 802	0	2 221	2 221	0
ROMANIA	18 575	4 794	13 781	5 768	5 763	5	24 343	10 557	13 786
SWEDEN	5 958	4 500	1 458	4 965	5 100	-135	10 923	9 600	1 323
SLOVENIA	544	140	404	100	185	-85	644	325	319
SLOVAKIA	258	37	221	318	68	250	576	105	471
SPAIN	3 181	4 000	-819	3 862	6 000	-2 138	7 043	10 000	-2 957
UK	14 657	13 285	1 372	8 536	10 860	-2 324	23 193	24 145	-952
			0						
TOTAL	140 777	105 492	35 285	105 611	130 000	-24 389	246 388	235 492	10 896

Source: ISF/BIMCO 2000/2010

Source: Study on EU seafarers employment, Final Report, Guy Sulpice, May 2011, p. 23.

Annex 6: Estimated costs per Member State

Member State	Employer Insolvency Directive	EWC	Information and Consultation ⁸⁵⁸⁶	Collective Redunancies ⁸⁷⁸⁸	Transfer of Undertakings ⁸⁹
BE	N/A	N/A	N/A	According to the MRAG study Belgium has 100% fixed term ontracts. Assuming that the fixed term contracts are for the duration of the voyage and the collective redundancy would take place after the expiring of the contract, no costs would incurred.	N/A

⁸⁵ This directive applies to undertakings with at least 50 employees or with establishments with at least 20 employees. Assuming that according to the MRAG study about 31% of the companies are single vessel companies or two vessel companies which will not fall within the scope of the Directive assuming an average crew of 13-24 crew members depending on size of vessels, type, year of building.

⁸⁶ The exact number of workers to whom the provisions of the Directive do not fully apply is impossible to identify since there is no statistical data on how many seafarers from the merchant navy and fishermen "ply the high seas".

⁸⁷ Directive applies to establishments employing more then 20 workers. Establishment is not being defined. The Directive applies in case of at least 10 redundancies over a period of 30 days. The merchant shipping sector is characterised by the systematic use of fixed term employment contracts as opposed to contracts of indefinite duration. It can be assumed that those employed on the basis of fixed term contracts are substantially less impacted by the exclusion since reduction of staff would be achieved by not renewing the contract at the end of the fixed term. In the case of merchant navy crew it is questionable how many would fall within the scope of the Directive as many modern merchant vessels seem to have a crew of less then 20. The majority of fishing vessels would not be included in the scope of the Directive because most fishing vessels have a crew of less then 20 workers, according to the MRAG study.

⁸⁸ Source for proportion of fixed term contracts per country MRAG study.

⁸⁹ The Directive applies "where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within the territorial scope of the Treaty". Transfer of undertakings in the merchant navy sector is reportedly rare. There is no information available, as Member States who made use of the exclusion do not report the transfer of undertakings. The sector is characterised by selling and buying of one or more vessels. It is proposed that the Directive would apply to the transfer of a seagoing vessel constituting an undertaking, business or part of an undertaking or business but its Chapter II would not apply when the object of the transfer consists exclusively of one or more seagoing vessels. Therefore in the scenario of transferring only one or two vessels the employers increased cost would entail consultation with the crew. In case of a transfer of undertaking it is reportedly practice that shares of the company are being transferred instead of the vessel and crew.

CY	248 share fisherman contribution to the fund: 0.2% of gross salaries paid	CY does not seem to host any companies which would qualify for an EWC	50 companies would qualify according to the MRAG report. Assuming a number of single vessel companies, about 35 companies might fall within the scope. Assuming one meeting a year and assuming teleparticipation of one person on a vessel. The costs would be EUR 1,326. In case of a two vessel company the costs would need to be spread over the two vessels: 663 euro per year.	1045 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. According to the MARG study 95% of the crew on board of these vessels are on fixed term contracts. In case of a collective redundancy, costs would be incurred by the employer by consulting the workers' representatives. Assuming that two working representatives are on board of the vessel, costs of a tele meeting would be 1,326 euro per participant.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see 4th column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
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DE	N/A	N/A	Provided equivalent national protection	820 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. According to the MARG study 30% of the crew on board of these vessels are on fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	N/A

DK	N/A	Equivalent protection under national law	N/A	665 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. According to the MARG study 60-70% of the crew on board of these vessels are on fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
EE	N/A	Hosts one group which qualifies for the Directive. EWC negotiations are on going ⁹⁰ . 18 vessels. Total costs EUR 1,989 ⁹¹	N/A	N/A	N/A

⁹⁰ Source www.ewcdb.eu accessed in December 2012

⁹¹ Assuming the scenario as described in paragraph 6.4.2. that one EWC member is on board of a vessel during the EWC meeting and that member is participating by phone to the meeting. The amount therefore needs to be spread over the total amount of vessels.

EL	30,196 share fisherman at cost of 0.15% of the any renumeration paid. ⁹²	Hosts no shipping company that qualifies for EWC	Provided equivalent national protection	1,582 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. 90% of seafarers are on fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
HU	N/A	Hosts no shipping company that qualifies for EWC	N/A	N/A	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.

⁹² No information available on renumeration of fishermen. Number of share fishermen is overestimated, see paragraph 6.3.1. of the Impact Assessment Report.

IE				88 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. No information available on fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
IT	N/A	Hosts no shipping company that qualifies for EWC	N/A	N/A	N/A

LU	N/A	N/A	Luxemburg has 165 vessels registered.⁹³ It has not been established if these vessels are owned by undertakings established in Luxemburg and how many vessels are owned by each company.	165 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. No information available on fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
LV	N/A	Hosts no shipping company that qualifies for EWC	N/A	62 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. 90% of seafarers are on fixed term contracts.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.

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				For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	
MT	No additional costs ⁹⁴	Hosts no shipping company that qualifies for EWC	50 companies would qualify according to the MRAG report. Assuming a number of single vessel companies, about 35 companies might fall within the scope. Assuming one meeting a year and assuming teleparticipation of one person on a vessel. The costs would be 663 euro per year.	1,853 vessels registered (ECAS, annual review 2011-2012). No information available on how many shipping companies are registered. 90% of seafarers are fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report.	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.

⁹⁴ See paragraph 6.3.2. of the Impact Assessment Report

NL	N/A	N/A	N/A	N/A	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
RO		Hosts no shipping company that qualifies for EWC	6 vessels would qualify according to the MRAG report. Assuming one or two companies are singel vessel companies. 4 companies would qualify. The costs are estimated at 663 euro per vessel per year.	143 vessels registered (ECAS, annual review 2011-2012). No information available on how a many shipping companies are registered. 70% fixed term contracts. For costs for information and consultation and cooling off period: 1,326 euro per meeting per participant and in worst case scenario 811, 442 euro, see par. 6.6.2. of the report	Factors to be taken into account, number of vessels and the rate of fixed term contracts (see third column). In case of the transfer of exclusively one or more vessels, costs for information and consultation will be incurred, which would be around 1,326 euro per participant.
UK	N/A	Provided for equivalent level of protection	Provided for equivalent level of protection	N/A	N/A