EUROPEAN
COMMISSION

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2013/0285 (NLE)

Proposal for a

COUNCIL DECISION

authorising Member States to sign and/or ratify, in the interest of the European Union, the International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel, 1995, of the International Maritime Organisation

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel of the International Maritime Organisation (hereinafter called the STCW-F Convention), was adopted on 7 July 1995 at the International Conference held in London from 26 June to 7 July 1995, with the participation of 74 governments and amongst them 22 current European Union Member States.

A specific Convention intended for fishing vessel personnel was required as the 1978 IMO International Convention on Standards of Training, Certification and Watch-keeping for seafarers (STCW Convention) excluded, inter-alia, the fishing vessel personnel from its scope. The STCW Convention was the first internationally-agreed instrument to address the issue of minimum standards of competence for seafarers. It has been implemented by Dir.2008/106/EC, amended by Dir. 2012/35/EU.

The objective of the STCW-F Convention is to ensure that personnel on board fishing vessels are qualified (as proven by an official certificate) and fit for the job (following medical examination), so that potential threats to safety of life and/or property at sea or to the marine environment are minimised during operations on board sea-going vessels. The Convention requires that personnel possess a minimum knowledge in specific matters and have performed duties on board a vessel during a minimum period of time.

An aim of the Convention is also to achieve and maintain a level playing field in the fisheries sector by fostering vocational education. Fishing vessel personnel's professional competences shall be certified in accordance with the Convention.

The provisions are mandatory only for vessels of 24 metres and over in length and of 750kw propulsion power or over and concerns skippers, officers, engineer officers and radio operators. Governments are however encouraged to establish training for deck-hands on vessels of 24 metres and over in length, while basic safety training is compulsory for all fishing vessel personnel.

Pursuant to the right of freedom of movement of workers, in matters of professional qualifications, Dir.2005/36/EC sets clear rules on mutual recognition between Member States under the so-called "general system of recognition".

The Directive applies to EU nationals wishing to pursue a profession in another Member State where this profession is regulated. The general system of recognition requires a comparison of the professional qualifications of the jobseeker, including relevant professional experience, with the ones required in the host Member State. The comparison shall be carried out within strict deadlines. Only in case of substantial differences, may the host Member State impose compensatory measures, which can take the form of an aptitude test or an adaption period.

The Directive applies to all regulated professions except where, for a given profession and in accordance of the principle of *lex specialis*, other specific rules directly related to the recognition of professional qualifications are laid down by a separate piece of legislation under EU law.

Professional activities related to the STCW-F Convention are regulated in most of the Member States.

The STCW-F Convention does not lay down a system of recognition of professional qualifications similar to the one established by Dir.2005/36/EC. On the contrary, the STCW-F Convention does not admit the use of certificates issued by States that are not party to the Convention. However, Member States are under the obligation to comply with EU law, namely to the provisions contained in Dir. 2005/36/EC.

In accordance with the AETR case law of the Court of Justice on external competence, the Member States are not allowed to ratify the STCW-F Convention without European Union authorisation as the provisions concerning the recognition of regulated professions pursed by EU nationals on board fishing vessels affect the exercise of the European Union's exclusive competence in this area.

As regards those Member States that have already ratified the Convention before the entry into force of the proposed Decision, they are required to deposit with the IMO Secretary-General a statement whereby they acknowledge that EU law shall prevail in case of conflict in relations between Member States.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

The Sectoral Social Dialogue Committee for Sea-Fishing has encouraged the Commission to take initiatives aimed at the swift implementation of the STCW-F Convention.

Promoting the ratification and enforcement of other international standards as regards living and working conditions in the fishing sector, such as the ILO (International Labour Organisation) Work in fishing Convention (n°188) is in line with activities of the Sectoral Social Dialogue Committee for Sea-Fishing and the European Commission. The objective of Convention C n°188 is to ensure that fishers have decent working conditions.

The Commission is currently assessing the request from the EU Social Partners in the sea-fisheries sector to implement their Agreement of 8 May 2013 concerning the transposition of the provisions of ILO C 188, pursuant to Article 155 TFEU.

Collection and use of expertise

There was no need for external expertise.

Impact Assessment

Not relevant.

Therefore, there is no need to consider several options.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

In view of the fact that competence for recognition of professional qualifications lies with the European Union, Member States cannot ratify the Convention without European Union authorisation. The Commission proposes that the Council should authorise Member States to ratify the STCW-F Convention in the interest of the European Union.

The authorisation to the Member States shall be granted on condition that they formulate a reservation when depositing their instrument of ratification to the effect that European Union law shall continue to be applied in their mutual relations.

Those Member States that have already ratified the Convention, shall submit a statement to the Secretary-General of IMO whereby they state that Union law relating to recognition of professional qualifications applies in relations between Member States.

The proposed Decision will therefore enable and encourage Member States to take all the necessary steps for ratification without further delay.

Legal basis

Article 43(2), 46, 53(1) and 62 in conjunction with Article 218(6)(a)(v) TFEU.

Subsidiarity principle

The proposal falls under the exclusive competence of the Union. Therefore the subsidiarity principle does not fully apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons.

Not relevant.

Not relevant.

Choice of instruments

Proposed instrument: Council Decision

Other means would not be adequate.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

5. ADDITIONAL INFORMATION

Detailed explanation of the proposal

Not relevant.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), 46, 53(1) and 62 in conjunction with Article 218(6)(a)(v) thereof,

Having regards to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) The Convention of the International Maritime Organisation on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel (hereinafter referred to as the 'IMO' and 'the Convention' respectively), was adopted on 7 July 1995 at the International Conference convened by the IMO in London at which delegations of 22 attending Member States voted in favour of its adoption;

(2) The Convention represents a major contribution to the fishing sector at international level in promoting safety of life and property at sea and the protection of the marine environment and it is therefore desirable that its provisions should be implemented as soon as possible;

(3) Fishing at sea is one of the most hazardous professions and thus appropriate training and qualifications are an essential means by which to cut the number of accidents. A safer working environment will make fishing vessel personnel jobs more attractive in the interest of the European fishing industry, as pursued by the Common Fisheries Policy. The Convention specifically aims at the protection of the marine environment, which is an objective of the Common Fisheries Policy;

(4) In the framework of Fisheries Partnership Agreements with third countries, it is important that crew on board vessels flying the flag of an EU Member State, possess appropriate professional qualifications as proven by accepted certificates so that recruitment under the conditions laid down in the Agreements is made easier;

(5) The European Parliament, the Council and the Commission are promoting safety at sea and safety at work as well as enhancement of the professional qualifications for workers on board fishing vessels. The EU financially supports training in the fishing sector, namely through the Fisheries Fund;

(6) Some articles of the Convention fall within the exclusive competence of the Union as regards the rules of the Union on the recognition of professional qualifications held by certain categories of fishing vessel personnel and affect the Treaty provisions and

secondary Union legislation, in particular Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications[1], as in force;

(7) The Union cannot ratify the Convention as it is not party to the IMO and the Convention does not contain a clause allowing a Regional Economic Integration Organisation that is constituted by sovereign States and has competence over certain matters governed by the Convention to be able to sign, accept, approve or accede to the Convention;

(8) Some Member States have not yet signed the Convention while others have already ratified it and deposited the instrument of ratification. It is in the interest of the Common Fisheries Policy that those Member States that have not signed or ratified the Convention yet do so speedily;

(9) Under the conditions laid down in this Decision, the Member States, which are bound by Union law rules on the recognition of professional qualifications, shall therefore be authorised to sign and ratify the Convention, as the case may be, in the interest of the Union.

HAS ADOPTED THIS DECISION

Article 1

The Member States are authorised to sign and/or ratify the international Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel, 1995, of the International Maritime Organisation, adopted on 7 July 1995, for the parts falling under the European Union's competence.

The authorisation referred to in paragraph 1 is conditional upon the deposit by the Member State at the moment of the signature of the Convention and/or when depositing the instrument of ratification with the IMO Secretary-General of the reservation that Union law relating to recognition of professional qualifications applies in relations between Member States.

Article 2

The Member States that have already ratified the Convention prior to the entry into force of the present Decision, without formulating a reservation, shall deposit a declaration whereby they acknowledge that Union law relating to recognition of professional qualifications applies in relations between the Member States.

Article 3

The Member States shall make efforts to take the necessary steps to deposit their instrument of ratification of the Convention with the Secretary-General of the International Maritime Organisation as soon as possible, preferably before 31 December 2013. The Council will review the progress of the ratification in January 2014.

Article 4

This Decision shall apply from the day of its publication in the *Official Journal of the European Union*.

[1] OJ L 255, 30.09.2005, p. 22.

Article 5

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President