



EUROPEAN TRANSPORT
WORKERS' FEDERATION



ECSA

European Community Shipowners' Associations

**SOCIAL PARTNERS' AGREEMENT BETWEEN ECSA
AND ETF TO AMEND COUNCIL DIRECTIVE
2009/13/EC TO ACCORD WITH THE AMENDMENTS
OF 2014 TO THE MARITIME LABOUR CONVENTION,
2006 AS APPROVED BY THE INTERNATIONAL
LABOUR CONFERENCE AT ITS ONE HUNDRED
AND THIRD SESSION, GENEVA, 11 JUNE 2014**

Explanatory Note

1. This explanatory note by ECSA and ETF is intended as a general guide to the Agreement on the ILO's 2014 amendments on financial security to the Maritime Labour Convention, 2006 (hereinafter referred to as the "Convention").
2. The purpose of the Agreement is to implement into EU law the 2014 amendments to Code A of the Convention, in respect of the requirement for Member States to ensure that ships which fly their flag are covered by an expeditious and effective financial security system to: (i) assist seafarers in the event of their abandonment, including repatriation, and (ii) assure compensation for contractual claims for death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement;
3. The ECSA/ETF Agreement amends the earlier Social Partners' agreement which is appended to Council Directive 2009/13/EC. This note does not form part of the Agreement on the amendments: it explains why such an Agreement is required and why certain amendments and omissions have been made from the original text of the ILO's 2014 amendments.
4. The Social Partners accepted the invitation of the European Commission to reach an agreement under Article 155 of the Treaty in order to ensure that Council Directive 2009/13/EC is updated in accordance with the ILO's 2014 amendments. This invitation arose in the context of the urgent need for such measures, particularly in relation to the persistent problem of abandonment, as illustrated on the ILO's data base on reported incidents of abandonment of seafarers.
5. The Social Partners have sought at all times to stay faithful to the text of the ILO's 2014 amendments, so far as possible. In any event, the Agreement does not remove from Members of the ILO the obligations that stem from ratification of the Convention and acceptance of subsequent amendments thereto. Member States of the EU are urged by the Social Partners to implement the ILO's 2014 amendments as soon as possible and, in any case, by no later than their entry into force on the 18th January 2017.
6. The Social Partners have agreed that, for the purposes of cohesiveness and consolidation, the best way to implement the amendments into EU law is by way of a Council Directive, amending the earlier Council Directive 2009/13/EC (which contains the provisions which are amended and expanded by this Agreement). This follows the approach taken by the Social Partners' Agreement on the Maritime Labour convention, 2006, insofar as it amended Council Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers.
7. The Social Partners note that implementation by a Directive will bind Member States as to the result to be achieved, whilst leaving national authorities the choice of form and methods. The Convention also allows the same degree of flexibility as is provided for by Article VI (3) and (4) of the Convention, which permits Members of the ILO to implement measures that are substantially equivalent to the Standards of the Convention.
8. The approach to the Agreement, concluded in accordance with Article 155, reflects that it cannot include non-mandatory text. Therefore, the Social Partners were unable to

reproduce the complete contents of the ILO's 2014 amendments and have omitted those relating to the Guidelines contained in Code B and Appendices A5-I, A5-II and A5-III and foregone the insertion of the new B4-I. This does not alter the status of those provisions in the Convention and Member States that are parties to the Convention are advised to take due account of those provisions, as stipulated in Article VI(1) and (2) of the Convention.

9. The Agreement aims to amend Council Directive 2009/13/EC in such a way, so far as possible, as to retain the structure and appearance of the amended Convention. For this reason, the contents of the new Appendices A2-I and A4-I, have been inserted into the new standards A2.5.2 and A4.2.2 as further paragraphs ((7) and (14) respectively), rather than separate appendices, which would have required them to have been numbered in a way which would not have accorded with the numbering sequence of the appendices in the Convention.

10. All the mandatory provisions of the ILO's 2014 amendments have been included in the Agreement. This approach accords with recognition by the Commission and the Social Partners that all such provisions fall within the scope of Article 153 of the Treaty.

11. For the avoidance of doubt and any duplication, as the Agreement implements the ILO's 2014 amendments into EU law, the Social Partners recognize and acknowledge that shipowners are not required to put in place a separate financial security system under EU law in addition to one that meets the requirements of the Convention. However, it is acknowledged that where the relevant financial security provisions meet the standards of the Convention, they also meet the standards of the Agreement.

12. The Social Partners emphasize that in no case shall the adoption of the provisions within the Agreement be deemed to affect any law, award, custom or agreement which ensures more favorable conditions to the workers concerned than those provided for in the Agreement.

13. The following destination table explains how the ILO's 2014 amendments have been implemented (or, as the case may be, omitted) into the Social Partners Agreement appended to Council Directive 2009/13/EC:-

| Destination Table | | |
|--------------------------|--|---|
| | REGULATION/STANDARD | Implemented or omitted into/from the Social Partners Agreement (2009 SPA) appended to Council Directive 2009/13/EC |
| | Amendments relating to Standard A2.5 - Repatriation | |
| 1 | A. Present heading "Standard A2.5 – Repatriation" | Becomes "Standard A2.5.1 - Repatriation" |

| | | |
|-----------|---|---|
| 2 | Standard A2.5.2 – Financial security Paragraphs 1-14 | Inserted (with some minor amendments) as:- Standard A2.5.2 – Financial security Paragraphs 1-14 |
| 3 | B. Amendments relating to Guideline B2.5 | Omitted as non-mandatory provisions fall outside scope. |
| 4 | C. Appendix A2-I (a)-(i) | Inserted into Standard A2.5.2 as paragraph 7(a)-(i). |
| 4 | D. Amendments relating to Appendices A5-I, A5-II and A5-III | Omitted as outside scope. |
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| | Amendments relating to Standard A4.2 – Shipowners' liability | |
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| 5 | A. Present heading "Standard A4.2 – Shipowners' liability" | Becomes "Standard A4.2.1 Shipowners' liability" |
| | New paragraphs 8-14 | Inserted as paragraphs 8-14 of newly designated Standard A4.2.1 (with amendment and addition (see below) to paragraph 14) |
| 6 | Standard A4.2.2 – Treatment of contractual claims, paragraphs 1-3 | Inserted as new "Standard A4.2.2 – Treatment of contractual claims", paragraphs 1-3 |
| 7 | B. Amendments relating to Guideline B4.2 and B4.2.2 | Omitted as non-mandatory provisions fall outside scope |
| 8 | C. Amendments to include new appendices | |
| 9 | Appendix A4.I – Evidence of financial security under Regulation 4.2, paragraphs (a)-(i) | Inserted as paragraph 14 of Standard A4.2.1 |
| 10 | Appendix B4-I – Model Receipt and | Omitted as outside scope |

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| | Release Form | |
| 11 | D. Amendments relating to Appendices A5-1, A5-II and A5-III | Omitted as outside scope |

The Agreement

The Social Partners proposed amendments to:

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

This Agreement sets out provisions to amend Council Directive 2009/13/EC to accord with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference at its one hundred and third session, Geneva, 11 June 2014. This Agreement is without prejudice to any law, award, custom or agreement which ensures more favourable conditions.

Amendment 1

Title 2 is amended as follows:

In the present heading "Standard A2.5 – Repatriation", replace "A2.5" by "A2.5.1".

Following paragraph 9 of the present Standard A2.5, insert the following heading and text:

'Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Agreement or the terms of the seafarers' employment agreement, the shipowner:

(a) fails to cover the cost of the seafarer's repatriation; or

(b) has left the seafarer without the necessary maintenance and support; or

(c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member State shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member State.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member State shall require that ships that fly its flag, and which required under national laws to carry a Maritime Labour Certificate or request to do so, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of this Standard A2.5.2.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 of this Standard.

9. Having regard to Regulation 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10 of this Standard; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on

board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

Amendment 2

Title 4 is amended as follows:

In the present heading "Standard A4.2 Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, insert the following text:

'8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

(b) there shall be no pressure to accept a payment less than the contractual amount;

(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;

(d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and

(e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member State shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall be in English or accompanied by an English translation and contain the following information:

(a) name of the ship;

(b) port of registry of the ship;

(c) call sign of the ship;

(d) IMO number of the ship;

(e) name and address of the provider or providers of the financial security;

(f) contact details of the persons or entity responsible for handling seafarers' contractual claims;

(g) name of the shipowner;

(h) period of validity of the financial security; and

(i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

Add the following heading and text following the present Standard A4.2:

'Standard A4.2.2 – Treatment of contractual claims

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member State after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

SIGNED IN BRUSSELS ON 5 DECEMBER 2016 IN THREE COPIES.

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