

**Subject:** Minutes of the meeting

**Meeting:** Social Partners negotiations Art 138 ECT, **Maritime Transport**

**Time and place:** 27.10.2006  
ECSA, 67 Rue Ducale, Brussels

### **1. Welcome and the adoption of the agenda**

DG TREN informs that under point 3, information on the last developments in the Council will be provided.

ETF would like to discuss the issue of the FAL Convention under item 6; AOB

### **2. Adoption of the minutes of the meeting on 28 September**

ETF says that under item 4 para 3 should be stated that JLS will be invited to this WG meeting. DG TREN explains that it was not possible on 27 October but hopes JLS together with legal service will join the SPs during next meeting.

Minutes of the last meeting were adopted.

### **3. Information from DG TREN and DG EMPL and answers to questions posed by the Social Partners.**

DG TREN informs on last developments in the Council. Concerning the deadline for ratification, there is political commitment (not binding provisions) that MS will ratify MLC as soon as possible. If MS ratify, modification of their legislation/ regimes will take time. UK claims that it will be between 4 and 5 years. COM will try to accelerate this process. The Social Partners Agreement turned into an EU legislation in virtue of Article 138, would be the best instrument to do so as a Directive gives firm dates for transposition

The opinion of the EP is expected to be in the plenary session in February 2007.

Apolitical agreement is expected in the Council in December 2006 with a view to get a final decision in March 2007.

As far as questions from Social Partners (SP) are concerned, COM informs:

#### **1. On the question: Who can amend a social partner's agreement?**

Changes can be introduced basically only by SP Agreement based on Art 137. If the MLC is modified, an agreement to modify legislation should be reached and then be tabled to the Council.

DG EMPL explains that the sequence of events would look like this:

SP Agreement → directive → SP decide to reopen negotiation  
→ SP are consulted if there is need of change  
→ the last resort: COM takes initiative

ETF clarifies whether the whole sequence would be like this:

Communication → SP decision to open negotiation → SP agreement → directive → failure/changes → SP consulted → new agreement or if SP do not want to act → EC proposal

DG EMPL gives the example of the working time directive 1999/63 which has to be aligned with ILO convention and SP will be consulted.

DG TREN confirms that MS have to implement directive but they will still have direct obligation versus ILO.

2. On the question: how can SP Agreement cope with Part B – guidelines, and can SP Agreement include recommendations?:

DG TREN answers that as a SP Agreement becomes a directive which is a binding instrument clarifying means and objectives, it cannot include recommendations. There is question whether SP can make part B compulsory, if they agree to do so, then it can become compulsory.

ETF indicates that they would like to make it binding, but understands that the MS fears concerning Part B must be overcome. Part B left some flexibility to MS. ETF proposes to focus first on Part A.

3. On the question on substantial equivalence: Is it relevant to refer to this principle?

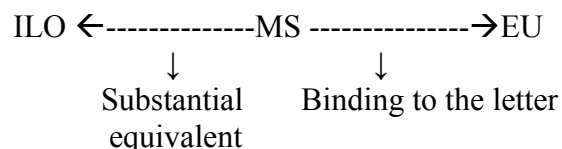
Substantial equivalence is included in Art 6 point 3 of the MLC.

DG TREN explains that if an agreement is adopted then the part of the MLC which was not covered by EC law will become EC law and MS will have to apply it.

ETF stated that they would not like using substantial equivalence and wonders whether a social agreement would remove the possibility of using the substantial equivalence.

DG EMPL explains that some flexibility in the content might be taken away from MS with EU legislation depending on the content of the SP agreement taking up parts of the ILO Convention. In any case, the EU legislation will oblige MS to check the compliance of national law with the objectives of the directive and it will also serve the ILO objectives.

The situation will be:



ETF says that during ILO negotiations, the notion of substantial equivalent was not wished by EU MS, but by US. ETF adds that sectoral agreement aims at introducing the level playing field in the EU instead of having 27 different variations and therefore the substantial equivalence will no longer be relevant.

ETF asks whether there is a possibility that the Council rejects the SP Agreement.

DG EMPL says that in theory yes, but it is extremely unlikely and has never happened before.

DG TREN informs that about 40% of the MLC can be covered by Art 137.

4. On the question concerning seafarer rights Art III and Art IV:

DG TREN explains that it cannot be subject to Art 137 ECT proceedings as the issue is covered by Art 6 of the European Union Treaty (EUT). These are fundamental principles and cannot be ruled by EC law but it could be envisaged to recall them as general principles as in previous pieces of legislation.

5. On question whether SP agreement will also cover non EU seafarers.

DG TREN explains that issue should be approached carefully and needs further consultation with the legal service. At this point COM is not in the position to give a final answer. However, at first glance it seems that if people are employed under national laws of member states it will be applicable to them.

ETF underlines that it is important that SP Agreement covers also seafarers not residing in the EU. MLC provisions should be applicable to all ships in the EU waters regardless of the flag.

DG EMPL explains that EU may have no competence in some fields, and members will have to resolve some issues directly with ILO.

#### **4. Consideration and decision on the scope of negotiation.**

DG TREN presented the following table:

<b>ILO matters</b>	<b>Community acquis</b>
<u>Not covered but not excluded from the EU competence foreseen by the treaties</u>  For example:  Matters included in Title III on food and accommodation	<b>Possible social agreement to be turned into EU law</b>
<u>Covered by EU law</u>  - Fully (working time) - Partly (medical certificates)	EU law already in force. Consider the issue of existing law amendment
<u>Not covered by EU law</u>	No Community acquis possible

For example:  - Wages in Title II on conditions of employment (excluded by Article 137.5) - The content of social protection in Title IV devoted to health protection, medical care, welfare and social security provisions (except on the coordination of social security regimes)	
Title V on Compliance and Enforcement	To be covered by an EU instrument adopted in <b>co decision</b> to enforce the social agreement
Preamble	To be considered as a possible reference in the recitals of an EU legislation
Article III on fundamental rights et IV on seafarers' employment and social rights	Consider a recommendation on topics which cannot be covered by EU legislation

DG TREN states that Title V is out of discussion here together with provisions of section 2.2 devoted to wages which is excluded by Art 137§5. ETF makes the reservation concerning complaints by seafarers (Title V) and wages as far as frequency, availability for inspection is concerned. ETF also points out that provision concerning calculation of wages constitutes only a guideline.

DG TREN decides that both issues should be further in-depth scrutinized.

COM can work on Title V in order to transform it into EC law using the standard way, namely the codecision procedure involving the EP and the Council. Then, almost all instruments of the MLC would be incorporated to EC law. DG TREN recalls that social security cannot be included as it constitutes the sole responsibility of MS as regards the content of protection. Regulation 1408/71 deals with the coordination of Social Security Systems but not on the content of national schemes.

DG TREN states that the clear situation is where provisions of the MLC are not included in the EC law. Exact wording of the MLC can be introduced – for example the provisions of Title III. Difficult situations arise when directives partly correspond to MLC provisions. As far as preamble, Art III and Art IV are concerned, the situation is more complicated and they might be referred as not binding as ILO preamble and added to SP Agreement in the form of a political message to MS and COM.

ETF informs that they have already made a preliminary scan of the existing legislation and produced a table which will be sent to the Commission for check. EU standards that are higher than MLC will not be touched, but they found out that existing EC law rarely fully corresponds to the MLC provisions and asks whether such EC laws can be amended by SP Agreement. The issues are: to define the adequate procedures to complement the acquis applicable to seafarers when a part of the MLC is partly covered by a directive or when a directive is not seafarer oriented or to adapt community law where the MLC is stricter or

more detailed (ex: medical certificate, annual leaves..) . ETF understands it is strategically better to have bits in the agreement complementing the acquis instead of amending the existing law to benefit from the advantages of the procedure foreseen in Article 138.

DG TREN explains that it depends whether issue falls under Art 137. All directives corresponding to MLC have to be thoroughly examined in terms of content.

ETF says that SPs have to check line by line directives' provisions and then if they are less strict or different in scope, they should agree on the wording of MLC. Same for the provisions not covered at all by EC law—agreement on the wording of the MLC should be reached.

DG EMPL reminds SPs that they do not have to decide on the scope of the agreement but the scope of the negotiations during the meeting.

ETF asks COM representatives to provide answers as soon as possible on the following issues:

- Will the agreement cover all seafarers irrespective of their place of residence?
- How integrating Art III TUE into a social agreement?
- Which method could be used to modify directives?

ETS also proposes to start with the easiest parts with clear legal situation.

## **5. Identification of the issues that have to be done before the next meeting.**

ETF identifies following tasks:

1. Screening of the EU law
2. COM will try to answer on remaining questions
3. Identification of issues on which SPs can agree on

By January SPs should be in position to take decisions on the subjects of common agreement.

DG TREN proposes to organize small workshops between 27 October and 11/12 December meetings. Colleagues having a thorough knowledge on specific pieces of legislation will be invited. Such meeting would help SPs to identify overlaps and enable them to determine what should be included in SP Agreement. A number of workshops can be organized, chapter by chapter.

ECSA finds this proposal very generous and suggests organizing such a workshop around 10 Nov as they have a meeting then. They also ask to keep MS informed about this process, as their agreement is needed in the end.

DG TREN agrees that MS should be kept informed, they receive reports on regular basis during the Council WG. On 17 October 2006, they were informed on the fact that SPs had decided to start negotiations. DG TREN proposed to the Council Working Group to come back with the information on this issue.

ETF endorses the proposition made by DG TREN. but believes 10 November is too soon as screening of the EC law is not finished, and SPs will not be in the position to ask specific and detailed questions.

They agree that MS should be made aware of the developments in the negotiation. SPs should be available for questions from MS but February would be better as more concrete results are expected by then.

ETF would also like to have a preparatory meeting before the next ILO working group meeting (separate meetings for employers and employees) and then proceed with the working group after lunch.

## **6. Any other business**

ETF prepared Joint Statement on the FAL Convention. Discussion followed. ECSA stated that they were not prepared to support it for the time being. ETF explained that issue is time sensitive and it is of utmost importance that the statement is issued as soon as possible and JLS together with the relevant Commissioners should be informed about the situations and the consequences of the latest amendments to FAL. Several employers supported ETF position and underlined the difficulties for shore leave posed by changes in international regulations not directly linked to the Schengen agreements.

It was decided that secretariats will discuss the issue in the upcoming days.

## **7. Date of the next meeting**

Next working group meeting will commence on December 11, afternoon.