



EUROPEAN COMMISSION
Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Social Dialogue, Industrial Relations

Brussels, 13 June 2007

SECTORAL SOCIAL DIALOGUE COMMITTEE FOR MARITIME TRANSPORT

WORKING GROUP MEETING

held on 11 May 2007 in Brussels

DRAFT MINUTES

Chairperson: Pia Voss

Commission representatives: Jackie Morin, Rudi Delarue, Dirk Hadrich, Sjoerd Feenstra, Nicolas Breczewski, Gérard Rozet, Anne Devouche.

Social partner participants: see attached list

1. Introduction

Further to the working group meeting of the sectoral social dialogue committee for maritime transport held on 10-13 March 2007 in the context of the negotiations pursuant Article 139 EC, the social partners wished to get some legal clarifications on the implications of concluding an agreement transposing some parts of the MLC into Community law. After transmitting both common and separate questions in writing to the Commission, the social partners expected answers and deeper discussion on the related issues during the meeting.

The Commission's services sent contributions to the queries of the social partners both in French and in English by notes on 8 and 10 May 2007.

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2. Discussion on the procedure

After recalling the context of the negotiations, the Social partners expressed their disappointment on the input provided by the Commission in the aforementioned notes and they stated that they had concerns on the time frame foreseeing the conclusion of an agreement by the end of 2007.

The Commission representatives recalled that the negotiation under Article 139 EC was autonomous and that legal analysis of the Social partner agreement and its compatibility with the Treaty and with existing EU legislation would generally be done by the Commission services after the conclusion of the agreement. Furthermore, the representativeness of the social partners would be checked by the Commission.

The legal exchange before the adoption of the social partner agreement could only be exceptional, given that the Commission shall not be part of the agreement. However, the aim of the meeting was to clarify certain legal aspects and questions. The challenge would be to path the way towards a Council decision that could implement the social partner agreement in legal terms.

3. Discussion on legal issues

Social security issues

The social partners wondered why social security provisions could not be taken up in the social partners agreement in virtue of Article 137 EC which mentions social security.

The Commission representatives recalled that the Community competence in social security was mainly the coordination of regimes. The provisions of Regulation 1408/71, based on Article 42 EC, are designed to coordinate the different national social security systems in order to ensure that those persons who exercise their right to free movement will not be adversely affected. The Community rules do not replace the existing national social security schemes by one single European scheme. The Member States remain free to determine the details of their national social security schemes. An Article 139-decision in the social security area would require a unanimity vote at the Council which would make it more difficult to have the decision adopted. In this framework, there are cases where social partners refrained from inserting social security clauses in their agreement(s) to facilitate the adoption in the Council. In this context, it would be possible to envisage separate agreements corresponding to the different chapters of the MLC. It could also be workable to design one agreement implemented through a Council decision leading to Community legislation and have in parallel an autonomous one implemented by the social partners and not transposed into Community law.

Regime applicable to third countries nationals

The social partners sought to know more about the rules applicable to the third countries nationals.

The Commission representatives recalled the principle of non discrimination in EU law and explained that there are many legal instruments at EU level aiming at protecting citizens, or more specifically workers, which use different concepts of the principle of non-discrimination. In many cases, this principle also applies to workers from third countries, directly or via international agreements (EEA, cooperation and association agreements...).

Third country nationals residing in the EU do not yet have the right to move for work purposes between Member States. On the basis of the long-term residents directive 2003/109/EC, once it is transposed into national law, third-country nationals have the possibility to move to another Member State for study, work or other purposes, once they have been granted the status of long-term resident. The Directive, however, does not provide the same rights to free movement to these third-country nationals as to EU-nationals.

Furthermore, it should be recalled that EU Directives on issues such as occupational health and safety or working conditions are in principle applicable to all workers, irrespective of their nationality. The same goes for most of the articles of the European Charter on Fundamental Rights.

Concerning wages no right on equal treatment would exist in EU legislation. Social security issues would be strictly in the hand of the Member States and the EU would only have limited and attributed competences.

Fundamental rights

A question on the difference between the right of association and the freedom of association was raised by the social partners.

Concerning the content of the social partner agreement, the following principles were recalled:

- ✓ The repetition of existing legislative provisions in new legislation would result in more complexity and potential problems.
- ✓ Definitions should be set to clarify the scope of the agreement. Social partners would have to decide what they would need. However, it is recommended not to add further complexity by deviating from existing EU definitions and social partners should clearly justify if they prefer and include ILO definitions.
- ✓ The options are either adopting a specific legislation in addition to the existing general framework or modifying the general directives.

Substantial equivalence

ECSA underlined that Member States were firm in their need for substantial equivalence and wished to know more about the possibilities to deviate from this concept i.e. to

reduce the flexibility through a social partner agreement. They pinpointed that Article VI §3 and §4 of the MLC aroused various interpretations between social partners.

In the context of Article 139 EC, the Commission representatives recalled that it was for the social partners to define implementation modalities within the respect of the purpose or objective of the relevant MLC, 2006 provisions.

After a potential inclusion of the future agreement (v.gr. as an Annex) within a directive the principles of EU law should be applied. In particular, it should be taken into account that "the directives are binding as to the result to be achieved" (Art. 249 EC). The margin of manoeuvre of the Member States in this respect has been defined in a line of rulings of the European Court of Justice.

Accommodation

The brackets around the text elements on accommodation in the informal document delivered by the social partners on 13 March 2007 indicate different positions of the social partners on the accommodation.

The Commission representatives explained that living conditions could be covered if linked to working conditions. However, solid justification is necessary if provisions on accommodation should be incorporated in the social partner agreement. In some cases, seafarers could come back to their domicile and spend the night ashore whereas in other cases, where seafarers had to stay overnight on board it was difficult to differentiate working and living conditions.

Entry into force of the social agreement

The social partners insisted on reaching a concomitant entry into force of the MLC and the Community instrument implementing the social agreement for the sake of level playing field.

The Commission representatives said that linking the entry into force of the directive to a future event could be feasible, however it should be expressly requested by the social partners. In any case such a condition could only be included in the Commissions proposal of directive and it was not advisable to include it in the agreement of the social partners.

Recruitment and placement

The informal document of 13 March 2007 indicated that the social partners have different opinions on the provisions concerning recruitment and placement.

The Commission representatives recalled that issues regarding the free movement of services do not fall within the scope of Art. 137 EC.

At the same time it was stated that the decision of the Council regarding the Commission's proposal of directive concerning agency work was still pending.

Formal content of a directive implementing a social agreement

The social partners wished to get a draft text with possible provisions that could be included in a future directive implementing the MLC.

The Commission representatives referred to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) which constitutes an example of a similar procedure and could be a model Directive.

Reflecting the MLC structure

The social partners wondered if the MLC structure (regulation, standards) could be maintained in the transposition into Community law.

The Commission representatives stated that the social partners were in principle free to give their agreement any structure they wished. However it was stressed that a future EU legal instrument (directive) would be binding upon the Member States in its integrity and therefore the combination of binding and non binding provisions was not feasible.

Furthermore the social partners might wish to include a clause within their agreement referring to a future revision of the latter. An example of such a clause can be found in Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (Clause 8). This might allow the social partners to take account of any future normative developments concerning MLC, 2006.

4. Any other business

Next meetings:

5 July 2007 (WG)

8 November 2007 (PL)

11 December 2007 (WG)