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European Transport Workers' Federation  
Fédération Européenne des Travailleurs des Transports  
Europäische Transportarbeiter-Föderation  
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## ETF Position on the General Approach reached by the Council (EPSCO) on the Transparent and Predictable Working Conditions Directive

Brussels, 28 June 2018

The ETF strongly **rejects the General Approach reached by the Council on 21 June 2018 which provides for the exclusion of seafarers** and sea fishermen from the following articles of the Transparent and Predictable Working Conditions (TPWC) Directive:

- Article 3(2)(l): Obligation to provide information if the work pattern is entirely or mostly unpredictable, the principle that the work pattern is unpredictable, the amount of guaranteed paid hours, the remuneration of the work performed in addition to the guaranteed hours and: (i) the reference hours and days within which the worker may be required to work; (ii) the minimum advance notice the worker shall receive before the start of a work assignment
- Article 3(2)(n): Obligation to provide information on the identity of the social security institution(s) receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer.
- Article 6: Additional information for workers sent to another Member State or a third country
- Article 8: Employment in parallel
- Article 9: Minimum predictability of work
- Article 10: Transition to another form of employment

It is to be reminded that **Directive 2015/1794** amending Directives 2008/94/EC<sup>1</sup>, 2009/38/EC<sup>2</sup>, 2002/14/EC<sup>3</sup> and 98/59/EC<sup>4</sup>, as regards seafarers, deleted the specific exclusion of seafarers from these key labour and social law Directives, putting seafarers on an equal footing with shore-based workers. This social progress had been achieved at the end of a long-lasting procedure which involved the European social partners in maritime transport, ETF and ECSA, who reached an agreement on the need to guarantee seafarers the same level of protection

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<sup>1</sup> 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

<sup>2</sup> 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

<sup>3</sup> 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 - Joint declaration of the European Parliament, the Council and the Commission on employee representation

<sup>4</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies



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as that of workers onshore, and those Directives are now fully applied to seafarers through the above-mentioned Directive.

Directive 2015/1734 specifically states that “*the existence of, and/or possibility of introducing, exclusions may prevent seafarers from fully enjoying their rights to fair and just working conditions and to information and consultation, or limit the full enjoyment of those rights. Insofar as the existence of, and/or possibility of introducing, exclusions is not justified on objective grounds and seafarers are not treated equally, **provisions which allow such exclusions should be deleted.***”

It should be noted that the legal basis for Directive 2015/1794 - **Article 153** of the TFEU whereby the European Parliament and the Council may adopt by means of directives “minimum requirements for gradual implementation aiming to improve the working conditions and the information and consultation of workers” – is the **same legal basis** used for the TPWC Directive. It is contradictory, to say the least, that the same legal basis is used to, on the one hand grant seafarers some basic social rights and protect them from further exclusion, and on the other hand exclude them again.

Moreover, Directive 2015/1794 refers to the fact that “the Union should strive to improve working and living conditions on board ships, and to exploit the potential for innovation in order to **make the maritime sector more attractive** to Union seafarers, including young workers.” In view of this and the objectives of the EU’s maritime transport strategy to promote the industry, it is not acceptable to exclude seafarers from minimum social rights that are applied to shore-based workers. It is moreover contradictory to the reported new social direction the European Commission is taking when promoting the European Pillar of Social Rights whose very aim is precisely to grant all workers in Europe with equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion.

In addition, it should be stressed that it was never the intention of the Commission to exclude a particular category of workers from the scope of the proposed TPWC Directive. On the contrary, the very spirit of the proposal being the granting of a common set of rights irrespective of the sector of the economy in which the workers operate.

The ETF does not believe that the specific conditions in the maritime sector create such difficulties that employment law Directives, drafted in general terms, cannot be applied to seafarers. The ETF refuses to countenance any suggestion that seafarers should always be considered for exclusion. **Member States have a degree of discretion on how to implement and any nuances that need to be applied to any particular sector, can be accommodated at that stage, in consultation with sectoral social partners.**

Although the **Maritime Labour Convention, 2006**, introduces some provisions in the same area covered by the TPWC Directive, there are some provisions which are unique to the latter.



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The MLC was intended to introduce a floor of minimum rights for seafarers, and contains a non-regression clause, which indicates that the MLC is not intended to reduce rights which are derived from other sources. The rights derived from EU law enjoy a much stronger enforcement regime than those emanating from ILO instruments. The ETF is against any suggestion that seafarers should be left to rely on weaker ILO enforcement, when other workers are protected by the EU concept of the right to an effective remedy.

Regarding the specific provisions to which the proposed exclusion relates:

- Article 3(2)(l): The work schedule would be a reference to the period starting on the day seafarers join the ship and ending on the day they leave the ship at the end of their tour of duty. It is not a reference to the daily hours of work in port and at sea during a tour of duty. The right would benefit any seafarer who does not enjoy a regular job and is in a position of having to rely on unpredictable offers of assignments on ships. Therefore, the ETF cannot see any problem applying this fully to seafarers.
- Article 3(2)(n): At a time when Member States have found agreement on the revision of the social security coordination rules which should create more fairness and clarity for mobile workers and should prevent a person from being left without social protection, they are denying seafarers the basic right to receive information on the identity of the social security institution(s) receiving the social contributions attached to the employment relationship. Since the requirements for social security provision for seafarers are unclear, it is all the more important that seafarers can enjoy this right to information. According to international regulation social security of seafarers is determined by the legislation of the flag state, which would mean that for ships flying the flag of an EU Member State, EU Regulation 883/04 applies. For the employers of Union seafarers working on these ships, it should therefore not be difficult to provide this information. For seafarers serving on ships flying flags other than those of their own country, international regulation (MLC, 2006) leaves room for interpretation as it gives responsibility either to the flag state or the country of origin of the seafarer. In this sense, the risk of not being properly covered is higher than for shore-based workers. The right to be informed about this coverage may help them to fully enjoy it. The argument that it may be "difficult" to provide the information by the shipowners, is no justification for exclusion.
- Article 6: To exclude seafarers from receiving additional information in case they would work on vessels flying flags other than those of their own country, would be denying them the basic rights enjoyed by shore-based workers. ETF cannot see any justifiable reason for excluding seafarers from enjoying the rights emanating from this article. ETF cannot see any difficulty for employers of seafarers to provide the additional information in that respect. As this also relates to Article 3(2)(l), the same reasoning applies (see above).



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- Article 8: The provisions as laid down in this article would allow seafarers to take up work with other employers, during their time off, so long as it does not conflict with their main job. There are no specific conditions within the maritime sector which would create any difficulties in applying this to seafarers. In some shipping sectors, seafarers work for several months onboard, followed by several months ashore. Some do take up other jobs during their time off. The ETF can see absolutely no reason why seafarers should not enjoy this right.
- Article 9: As this relates to Article 3(2)(l), the same reasoning applies (see above). The Article is not intended to prevent workers taking up work at short notice should they wish to do so; it is intended to only ensure that they have the choice whether to accept an assignment or not. Again, this would not relate to day to day work on board, but to the issue as whether a seafarer (who is subjected to variable work offers) choses to join a ship or not.
- Article 10: To exclude seafarers from requesting more stable employment after six months' service would be denying them the basic rights enjoyed by shore-based workers. ETF cannot find any justifiable reason why seafarers would be excluded from enjoying the rights emanating from this article. ETF cannot see any difficulty for employers of seafarers to provide written replies to these requests within the time limit established by Member States.

For all the above reasons articulated in this Position Paper, and in the further development of the legislative procedure, ETF urges the EU policymakers to oppose the exclusionary regime for both seafarers and sea fishermen as specified in Recital 7b and Article 1(7) of the Council General Approach, and calls on the Council and the European Parliament to ensure that the obligations set out in Articles 3(2)(l) and (n), 6, 8, 9 and 10 of the proposed Directive do apply to seafarers and sea fishermen.