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Training and certification of fishermen

The role of the European social partners in sea-fishing

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In memory of
Jaap Bruin, Alan Fairburn, Arie van der Plas
and so many other fishermen who died at sea

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

Article 3, paragraph 5, of the
Treaty on European Union

Unlike the maritime transport sector, there is no single EU standard for the training and certification of fishers relating to health and safety on board. Member State safety training and certification requirements for fishers are complicated and vary significantly between Member States. This complexity is an obstacle to the free movement of fishers and it makes it harder to comply with statutory training and certification requirements. It may be contributing to illegal labour, and worker exploitation in the fishing sector.

Abstract from the July 2018 report
Research for PECH Committee - Training of Fishers

The EU Sectoral Social Dialogue Committee in Sea-Fishing (SSDC-F)
is a European institution which is established on the basis of
Article 152 of the Treaty on the Functioning of the European Union
and which is maintained at Union level by the European social partners in sea-fishing:

European Transport Workers' Federation (ETF)
General Confederation of Agricultural Co-Operatives in the European Union (COGECA)
Association of National Organisations of Fishing Enterprises in the European Union (Europêche)



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List of abbreviations

C125	Fishermen's Competency Certificates Convention, 1966
C188	Work in Fishing Convention, 2007
CCRF	Code of Conduct for Responsible Fisheries, 1995
CFP	Common Fisheries Policy
EU	European Union
FAO	Food and Agriculture Organization
GMDSS	Global Maritime Distress and Safety System
ILO	International Labour Organization
IMO	International Maritime Organization
LOSC	United Nations Convention on the Law of the Sea, 1982
MLC	Maritime Labour Convention, 2006
MS	Member State(s)
OJ	Official Journal of the EEC/EC/EU
R199	Work in Fishing Recommendation, 2007
REFOPE	Réseau Européen pour la formation à la Pêche et l'Emploi European Network for Fisheries Training and Employment
SDG	Sustainable Development Goals of the United Nations
SFV	Torremolinos International Convention for the Safety of Fishing Vessels, 1977
SOLAS	International Convention for the Safety of Life at Sea, 1974
SSDC-F	Sectoral Social Dialogue Committee in Sea-Fishing
STCW-S	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNCLOS	United Nations Convention on the Law of the Sea, 1982

Introduction

Safety at sea is key

Although up-to-date, reliable, overall statistics are not available, it is common knowledge that fishing is a hazardous occupation if compared to other occupations¹. According to statistics on accidents at work published by Eurostat, forestry and fishing, taken together, rank among the most dangerous sectors by being responsible for 13,2% of the total number of 3.876 fatal accidents at work in the European Union in 2015.² Still too many fishermen get seriously injured or lose their lives during their work at sea to serve society by supplying food. Efthimios E. Mitropoulos, former Secretary-General of the International Maritime Organization (IMO): “The lack of internationally enforced standards of education, training, minimum competency and minimum vessel safety has, and will continue to, cost fishers their lives, their property and their livelihoods; it will continue to cost their families the loss of their loved ones on whom they depend, in many cases, for their survival. This state of affairs cannot go on. [...] Although it is not possible to eliminate all the hazards of nature, it is possible, with the appropriate commitment from those [...] responsible for regulating the fishing industry, to make it safer. The means to do so are there at our disposal, and I urge the parties concerned to make good use of them.”³ Even within the European Union (EU) the ratification/accession rates of internationally agreed legislative instruments on safety at sea in fishing are low, especially if compared with similar instruments for shipping.

In view of this, the most important task of the fisheries social partners at European Union level (“management and labour” in Union-speak) is promotion of measures for fishing vessels necessary to ensure safety at sea with regard, *inter alia*, to:

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1. Preamble to the *Work in Fishing Convention, 2007* (C188).
 2. Eurostat, *Accidents at work statistics*, https://ec.europa.eu/eurostat/statistics-explained/index.php/Accidents_at_work_statistics.
 3. Efthimios E. Mitropoulos, at the time Secretary-General of the IMO, in an address to the Committee on Fisheries of the FAO in March 2007.
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- construction, equipment and seaworthiness of fishing vessels;
- training of fishermen;
- manning of fishing vessels;
- labour conditions of fishermen; and
- prevention of collisions.

Over the years, the social partners, working together in the Union's Sectoral Social Dialogue Committee in Sea-Fishing (SSDC-F), have done their job by means of various projects. In the context of this paper on training and certification of fishermen the following projects are noteworthy:

- The study, conducted from 1998 to 2000, on mutual recognition of certificates in the sea fisheries sector of Europe which resulted in the Bénodet (France) forum discussion in October 2000, a final report in December 2000⁴, and the REFOPE website, which, unfortunately, could not be maintained due to lack of funding.
- The publication, in May 2007, of the *European handbook for the prevention of accidents at sea and the safety of fishermen*. The electronic version of this handbook is still available on the internet in sixteen languages.⁵
- The signing, in May 2012, of a social partners agreement on implementation of the *Work in Fishing Convention, 2007* (C188) of the International Labour Organization (ILO) which has been transposed into an EU-Directive in December 2016⁶.

But the work is not finished.

The international community has agreed three cornerstone Conventions setting standards on safety at sea in fishing in a broad sense. These are:

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4. See: europeche.chil.me/european-council (click the icon at the bottom of that page).
 5. See: europeche.chil.me/handbook-safety.
 6. Directive (EU) 2017/159. Communication to the European Parliament on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2019, Brussels, 11 June 2018, p. 5: "A major development in improving working conditions in the EU fleet is the successful transposition of the International Labour Organisation (ILO) Work in Fishing Convention C188 into EU law as agreed by the EU social partners. This Convention creates a single and coherent instrument for improving the living and working conditions on board fishing vessels. However, only a few Member States have ratified the international conventions relevant for fisheries and transposition of these standards into EU law is still not complete. Ensuring decent work, health and safety conditions on board fishing vessels is high on the Commission's agenda".
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- the IMO *Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV)*;
- the IMO *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)*; and
- the ILO *Work in Fishing Convention, 2007 (C188)*.

The *United Nations Convention on the Law of the Sea, 1982 (UNCLOS)* places the duty on flag States to adopt measures under their internal law that ensure safety at sea taking into account the applicable international instruments. The latter is done through ratification of or accession to these instruments and their implementation in national law.

The table in Annex I shows that the EU and all its Member States have become party to UNCLOS, but only a minority of Member States have ratified or acceded to all or some of the three cornerstone international Conventions on safety at sea in fishing. The table also shows that the EU has nonetheless ensured, through Council Directives 97/70/EC and 2017/159, that SFV and C188 (will) apply in all Member States, be it that SFV only applies to fishing vessels of 24 metres in length and over, leaving the majority of fishing vessels unregulated in respect of construction, equipment⁷ and seaworthiness, and that C188 will only apply to fishermen who are employed, leaving the relatively large group of self-employed fishermen unprotected⁸. The table further shows that, in rather embarrassing contrast to fishing, a very large majority of Member States have ratified or acceded to all of the three cornerstone Conventions on safety at sea in shipping. Only two land-locked Member States have not ratified the *Maritime Labour Convention, 2006 (MLC)* to date.

At this stage, judging from the table in Annex I, 23 years (!) after the international agreement was made, most EU Member States, at least those who are coastal States, still have to fulfill their international fishing vessel flag State duties by bringing their legislation on safety at sea in fishing in line with STCW-F.⁹ In the

7. However, see Directive 93/103/EC covering fishing vessels of 15 metres in length between perpendiculars and over (or 18 metres in length between perpendiculars and over if 'built' before 23 November 1995; see Article 2, paragraphs (b) and (c) for precise meaning of 'built').

8. Self-employed fishermen, however, who are present on the same vessel with employed fishermen have the same protection as the employed fishermen (Article 2, paragraph 1 (b), of the Annex to Council Directive (EU) 2017/159.

9. Some Member States may argue that for them there is no point in acceding to STCW-F as they do not have sea-going fishing vessels of 24 metres in length and over or equipped with 750 kilowatts propulsion power and over, but that excuse is not valid because of the Convention's Chapter III on basic, pre-sea safety training, which applies to all fishermen on all sea-going fishing vessels. See: Articles 1,

opinion of the social partners, the time has come for the EU to step in, for very valid reasons.

In relation to its Member States, the Union has exclusive competence to legislate and adopt legally binding acts in the area of the conservation of marine biological resources¹⁰ and has therefore, in the form of a directly applicable Regulation, adopted a common fisheries policy (CFP)¹¹. In addition, the Union has shared legislative competence with its Member States for other fisheries matters the Treaties of Lisbon confer to it.¹²

Under international law, UNCLOS in particular, the Union has to ensure that its CFP and other legislative instruments concerning fisheries, including the so-called sustainable fisheries partnership agreements with third countries, do not jeopardize safety at sea in its broad, international sense.¹³ In other words, the Union must avoid that its policies endanger human life's integrity. In the opinion of the social partners this could best be achieved by implementing the internationally agreed standards in EU's legislation on safety at sea in fishing, especially because the ratification/accession rates of its Member States are so low. Concerning STCW-F that is not the only reason why the Union should do this.

One of the cornerstones of the Union is free movement of persons. Due to various demographic, economic and fisheries developments fishermen may have to move between fishing vessels of different Union flag States. Increasingly, crews on board EU Member States' fishing vessels are indeed of mixed nationalities. Directive 2005/36/EC on the recognition of professional qualifications applies to maritime occupations such as those of fishermen. It helps to promote compliance with the obligations laid down in the Treaties of Lisbon to abolish obstacles to the free movement of persons and services between Member States – be it not greatly

items .7 and .8, and 3 of STCW-F wherein 'fishing vessel' is defined – without these limitations – as "any vessel used commercially for catching fish or other living resources of the sea", 'seagoing fishing vessel' is defined as "a fishing vessel other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply", and the Convention is made to apply to "personnel serving on board seagoing fishing vessels entitled to fly the flag of a Party". Depending on the rank, the limitations do, however, apply to the requirements of Chapter II of STCW-F on certification of skippers, officers, engineer officers and radio operators.

10. Article 3, paragraph 1 (d), of the *Treaty on the Functioning of the European Union* (TFEU).

11. Presently Regulation (EU) No 1380/2013.

12. TFEU, Article 4, paragraphs 1 and 2 (d).

13. See also: Title II, Provisions having a general application, Article 9, TFEU which reads as follows: "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health".

for fishermen due to bureaucratic impediments that are hard to overcome –, but it does not ensure a standardized level of training for all fishermen serving on board vessels flying the flag of a Member State. A standardized level of training is, however, vital from the viewpoint of safety at sea because, for instance, persons working side by side on board a fishing vessel who originate in different Member States must know from each other what their competences are in order to avoid accidents. There is only one way to establish that, which is standardized training and certification throughout the Union. It is therefore essential to define common minimum levels of training for EU fishermen. On basis of international law, UNCLOS in particular, actions taken at Union level in the field of safety at sea must be in line with internationally agreed rules and standards. The levels should therefore be based on the standards of training already agreed at international level. Further, the importance of creating a level playing field in EU's labour market for fishermen cannot be underestimated, especially not where certain Member States have a surplus of fishermen and others have a shortage. Common minimum levels of training for fishermen will not only improve safety at sea, it will also further free movement of fishermen.

Another, quite urgent reason for transposition of STCW-F into an EU-instrument lies within the port State control provisions of the Convention.¹⁴ EU fishing vessels entering a foreign 'STCW-F compliant' EU port could be faced with certification demands they cannot comply with because the flag State has not acceded to and implemented STCW-F. Fishing vessels operating in third countries' exclusive economic zones under EU fisheries agreements could be faced with similar problems if the third country is party to the Convention (e.g. Mauritania, Morocco, Norway) but the flag State has not. On the other hand, since these agreements do not respect the flag State duties referred to in this paper, due to the absence of appropriate Union legislation we presume, and negligence of Member States to protect their interests, fishing vessel owners run the risk of having to break flag State law on safe manning of fishing vessels and training and certification of fishing vessel personnel once they are obliged to have local fishermen on board.

And last, but not least, we precluded on this already, STCW-F offers a system for recognition of fishermen's certificates of competence that is far less bureaucratically complicated for fishermen, who usually can only spend short periods ashore which often fall in weekends, than the system of Directive 2005/36/EC. It thereby offers fishermen better chances for jobs on the EU and international labour markets and thus better employment protection.

14. See: Article 8, in particular paragraph 8, Regulation I/4, and Regulation I/7, item .2, of STCW-F.

Ever since their work on the mutual recognition of certificates (see above), the social partners have advocated the transposition of STCW-F into Union legislation as well. Despite strong support from the European Economic and Social Committee (EESC)¹⁵, so far this has only led to Council Decision (EU) 2015/799 of 18 May 2015 authorising Member States to become party, in the interest of the European Union, to STCW-F. Without much success. Member States do not seem to have a big appetite “to make good use of” the authorization¹⁶ and the European Commission seemed to be reluctant to take it a step further for a long time. Because Member States want less instead of more Europe? That would be, of course, a hip political over-simplification of reality. There still is EU ‘meddling’ that is needed and wanted.

Interestingly, as said and shown in Annex I, the international community has adopted three Conventions on safety at sea in shipping that are similar to the aforementioned Conventions on safety at sea in fishing, including the IMO *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* (STCW-S). The EU has implemented that Convention in its *acquis* at an early stage and updates the Directives concerned regularly. There is no excuse for this distinction between seafarers and fishermen. There is no excuse for this discrimination against fishermen who share the seas with seafarers, worldwide in the proportion 24 : 1 (!).

In view of the foregoing, social partners wish to take the initiative themselves, if the Commission does not take action soon, by entering into a social partners agreement at Union level which should be implemented by a Council decision on a proposal from the European Commission.¹⁷ The Commission, however, is of the opinion that in this case social partners do not have the competence to make use of the legislative opportunities offered by the *Treaty on the Functioning of the European Union* (TFEU) because education and vocational training are not included in the

15. In its opinions on the Green Paper and the European Commission's proposal for a new CFP, the EESC noted that professional qualifications were not systematically recognized in different EU countries and strongly suggested that the Commission should consider implementing a system of common core qualifications and recognition of diplomas which could encourage fishermen to move from one country to another and help prevent the risk of accidents. See: Official Journal (OJ) C 18 p. 53 of 19-01-2011, item 4.2.2, first dash, p. 44 and OJ C 181 p. 183 of 21-06-2012, items 3.12.1, 3.12.3 and 3.12.5, p. 192.

16. Since its adoption in 1995 only Belgium, Denmark, Latvia, Lithuania, Poland, Portugal, Romania, and Spain have ratified or acceded to the Convention. Only Belgium, Poland, Portugal, and Romania acceded to the Convention after 18 May 2015.

17. See: TFEU, Article 155.

list of matters¹⁸ the European social partners' statutory competence relates to. In this paper sea-fisheries social partners refute the Commission's opinion as they have the required competence in the field of "improvement in particular of the working environment to protect workers' health and safety" which is exactly the purpose of STCW-F, *i.e.* improvement through promotion of safety of life at sea¹⁹ (which is key) in a broad sense.

The length of fishing vessels

Fishing vessels are usually classified according to their length. In this paper, like in most of the international instruments defining the term, *length (L)* means 96% of the total length on a waterline at 85% of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that length is greater; in vessels designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline.

However, Directive 93/103/EC, discussed in this paper, uses 'length between perpendiculars' to classify fishing vessels without giving a definition of the term. The social partners included a definition in their agreement on implementation of C188: "*length between perpendiculars (LBP)* means the distance between the forward and the after perpendiculars; the forward perpendicular shall be coincident with the foreside of the stem on the waterline on which the length (L) is measured; the after perpendicular shall be coincident with the axis of the rudder stock on that waterline"²⁰

Talking about standards... It would not be a luxury if the Union would classify fishing vessels in accordance with international standards, *i.e.* on basis of their length (L) instead of their length between perpendiculars (LBP), their length overall (LOA), their gross registered tonnage (GRT), which is no longer allowed anyway, or their gross tonnage (GT), through its entire *acquis*.

18. See: TFEU, Article 153.

19. See: Preamble to Attachment 1 to STCW-F.

20. Directive (EU) 2017/159, Annex, Article 1 (j).

Legal basis

Article 118a, paragraph 1, of the *Treaty establishing the European Economic Community* and its successor, Article 153, paragraph 1 (a), of the *Treaty on the Functioning of the European Union*, play a central role in this paper.

The former reads: “Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area, while maintaining the improvements made”.

The latter reads: “With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (a) improvement in particular of the working environment to protect workers' health and safety; (b) [...]”.

Article 151 reads: “The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to *make possible their harmonisation* while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combatting of exclusion. To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy. They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action” (stress added).

Summary

[PM]

Sources of international law

Introduction

This chapter gives a brief overview of international instruments dealing, directly or indirectly, with training of fishermen for the safety of life and property at sea. An overview of the international instruments on safety at sea in fishing is included in Annex II.

The United Nations Convention on the Law of the Sea, 1982

The long, often turbulent history of the freedom – rights and duties – of the seas culminated in the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) which entered into force on 16 November 1994. In the course of several years all Member States of what is now the European Union have become party to the Convention; the European Union itself became party on 1 April 1998.

“The LOSC regulates, in greater or lesser detail, almost every possible activity on, in, under, and over the sea.”²¹ This paper, however, will focus on the international duties of fishing vessel flag States to ensure safety at sea as laid down in Article 94 of the Convention and in particular on training of fishermen.

Fishing vessels are subject to the exclusive jurisdiction of the flag State²², who shall effectively exercise its jurisdiction and control in administrative, technical and social matters over these ships²³. Since flag State jurisdiction is exclusive, the somewhat ambiguous phrase “administrative, technical and social matters” must be construed broadly to include any matters affecting vessel operations in order to avoid regulatory lacunae²⁴ and conflicts.

21. Robin R. Churchill, *The 1982 United Nations Convention on the Law of the Sea*, in: Donald R. Rothwell *et al* (ed.), *The Oxford Handbook of the Law of the Sea*, Oxford, paperback edition, 2017, p. 24.

22. UNCLOS, Article 92, paragraph 1.

23. UNCLOS, Article 94, paragraph 1.

24. Richard A. Barnes, *Flag States*, in: Donald R. Rothwell *et al* (ed.), *op cit*, p. 314.

In particular every State shall assume jurisdiction under its internal law over each fishing vessel flying its flag and its skipper, officers and crew in respect of these “administrative, technical and social matters”²⁵ and shall take such measures for these ships as are necessary to ensure safety at sea with regard, *inter alia*, to:

- their construction, equipment and seaworthiness²⁶;
- their manning, and the labour conditions and the training of their crews, taking into account the applicable international instruments²⁷; and
- the use of signals, the maintenance of communications, and the prevention of collisions²⁸.

Such measures shall include those necessary to ensure:

- that each fishing vessel is in charge of a skipper and officers who possess appropriate qualifications, in particular in seamanship, navigation, communication and marine engineering, and that the crew is appropriate in qualifications and numbers for the type, size, machinery and equipment of the ship²⁹; and
- that the skipper, officers and, to the extent appropriate, the crew are fully conversant with³⁰ and required to observe the applicable international regulations concerning safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio³¹.

In taking the measures called for the flag State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.³²

25. UNCLOS, Article 94, paragraph 2 (b).

26. UNCLOS, Article 94, paragraph 3 (a).

27. UNCLOS, Article 94, paragraph 3 (b).

28. UNCLOS, Article 94, paragraph 3 (c).

29. UNCLOS, Article 94, paragraph 4 (b).

30. Oxford Dictionary of English: “Familiar with or knowledgeable about something”.

31. UNCLOS, Article 94, paragraph 4 (c).

32. UNCLOS, Article 94, paragraph 5.

The Code of Conduct for Responsible Fisheries, 1995

The voluntary FAO *Code of Conduct for Responsible Fisheries, 1995* “was unanimously adopted on 31 October 1995 by the FAO Conference and provides a necessary framework for national and international efforts to ensure sustainable exploitation of aquatic living resources in harmony with the environment”³³.

From the foregoing overview of UNCLOS’s Article 94 it is important to understand that fishing vessel flag States must ensure safety at sea through their internal legislation in respect of *any* matters affecting vessel operations. As fisheries policies undeniably affect fishing vessel operations, these policies should therefore be designed such that they do not jeopardize safety at sea or, in other words, are not in conflict with legislation ensuring safety at sea.

At least the FAO seems to have understood this principle, because the *Code of Conduct for Responsible Fisheries, 1995* (CCRF) recommends that:

- States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair living and working conditions and meet internationally agreed standards adopted by the relevant international organizations³⁴;
- health and safety standards are adopted for everyone employed³⁵ in fishing operations and that such standards should be not less than the minimum requirements of relevant international agreements on conditions of work and service³⁶;
- States should enhance through education and training programmes the education and skills of fishers and, where appropriate, their professional qualifications while such programmes should take into account agreed international standards and guidelines³⁷; and that
- flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international Conventions, internationally agreed codes of practice and voluntary guidelines³⁸.

33. Preface to the Code, p. vi.

34. Paragraph 6.17 of the Code.

35. Both workers and self-employed persons.

36. Paragraph 8.1.5 of the Code.

37. Paragraph 8.1.7 of the Code.

38. Paragraph 8.2.5 of the Code.

Within the scope and the context of the Code, these recommendations make it clear that a fully-fledged responsible fisheries policy not only encompasses measures for the conservation of marine biological resources, but also integrates or takes into account measures complying with international standards on safety at sea, including those concerning training and certification of fishermen and decent living and working conditions on board fishing vessels.³⁹ In other words, fisheries policies should be coherent with policies on safety at sea in order to avoid unintended safety and health hazards.⁴⁰

The Fishermen’s Competency Certificates Convention, 1966 and the Vocational Training (Fishermen) Recommendation, 1966

The ILO *Fishermen’s Competency Certificates Convention, 1966* (C125) entered into force on 15 July 1969. At present, within the EU, it is in force for: Belgium, France, and Germany.⁴¹ The ILO has given it the status “to be revised”, which is an indication of the Convention being outdated. For that reason, in this paper, C125 will further be ignored.

The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

The IMO *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995* (STCW-F) entered into force on 29 September 2012. At present, within the EU, it is in force for: Belgium, Denmark, Latvia, Lithuania, Poland, Portugal, Romania, and Spain.⁴² A large majority of the current Member States of the European Union participated in the Conference that led to the adoption of the Convention.

39. See also: Olafur Hannibalsson, Gudrun Petursdottir, Jeremy M.M. Turner, *Safety at Sea as an Integral Part of Fisheries Management*, FAO, Rome, 2001, Fisheries Circular No. 966; and Gunnar Knapp, PhD, *International Commercial Fishing Management Regime Safety Study: Synthesis of Case Reports*, FAO, Rome, 2016, Fisheries and Aquaculture Circular FIRO/C1073.

40. See: TFEU, Article 9.

41. See: ILO’s web site (www.ilo.org), Labour standards, C188, Ratifications by country (bottom of page).

42. See: IMO’s web site (www.imo.org), Conventions (bottom of page), Status of Conventions.

The text adopted on 10 July 1995 consists of the Final Act of the International Conference on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, Attachment 1, which is the actual International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, and Attachment 2, Resolutions adopted by the Conference. The parties to the Convention noted “the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978” and desired “to further **promote safety of life and property at sea** and the protection of the marine environment by establishing in common agreement international standards of training, certification and watchkeeping for personnel employed⁴³ on board fishing vessels”⁴⁴ (stress added).

The text of Attachment 1 consists of 15 Articles and an Annex that is divided into 4 Chapters to which three Appendixes are added. Chapter I holds general provisions, Chapter II holds provisions on certification of skippers, officers, engineer officers and radio operators, Chapter III holds provisions on basic, pre-sea safety training for *all* fishing vessel personnel, and Chapter IV holds provisions on watchkeeping. The Appendixes give models for certificates and endorsements of certificates.

The 15 Articles set out provisions on (1) general obligations, (2) definitions, (3) application, (4) communication of information, (5) other issues and interpretation, (6) certification, (7) national provisions, (8) control, (9) promotion of technical cooperation, (10) amendments, (11) signature, ratification, acceptance, approval and accession, (12) entry into force, (13) denunciation, (14) depositary, and (15) languages.

In its ten Regulations Chapter I of the Annex sets out (1) definitions, (2) application, (3) certificates and endorsements, (4) control procedures, (5) communication of information, (6) administration of certification arrangements, (7) recognition of certificates, (8) transitional provisions, (9) dispensation, and (10) equivalents.

Chapters II-IV of the Annex set minimum standards for:

- training and certification of nautical officers (*i.e.* skippers and officers in charge of navigational watches) on board fishing vessels of 24 metres in length and over, operating in limited waters⁴⁵;

43. Both employed and self-employed persons.

44. Preamble to STCW-F.

45. Annex 1 to Resolution A.539(13) adopted by the IMO: “*Limited waters* means those waters having limits defined by the Administration [of the flag State] within which a degree of safety is considered to exist which enables the standards of qualification and certification for skippers and crews of fishing vessels

- training and certification of nautical officers on board fishing vessels of 24 metres in length and over, operating in waters beyond limited waters (*i.e.* in unlimited waters);
- training and certification of engineer officers aboard fishing vessels powered by main propulsion machinery of 750 kilowatts (kW) or more;
- training and certification of GMDSS⁴⁶ radio personnel;
- basic, pre-sea safety training for all fishing vessel personnel; and
- watchkeeping.

A list of minimum knowledge required for certification of fishermen is included in Annex III to this paper.

Apart from the provisions on certification of fishermen and the requirements for obtaining certificates, a further important asset of the Convention is the possibility of recognition by a flag State party of certificates issued by or under the authority of another party to it. For fishermen the recognition procedure is far less aggravating and time consuming than that of Directive 2005/36/EC because it is solely based on examination of certificates without having to complete an adaptation period of up to three years or having to do an aptitude test often resulting in having to follow a partial or full training programme of the flag State. Instead, the recognizing flag State shall ensure that the requirements for standards of competence, as well as the issue and endorsement of certificates by the issuing State, are fully complied with.⁴⁷ This is usually done through a bilateral agreement between the flag State and the issuing State which lays down, *inter alia*, inspection of training facilities.

The nine Resolutions of Attachment 2 concern (1) training of radio operators for the global maritime distress and safety system (GMDSS), (2) radar simulator training, (3) guidelines and recommendations for fishing vessel personnel, (4) training of deck-hands on board fishing vessels of 24 metres in length and over, including, in an annex, a recommendation on such training, (5) training of fishing vessel personnel in personal survival techniques, including, in an annex, guidance

to be set at a lower level than for service outside the defined limits. In determining the extent of limited waters the Administration should take into consideration the following factors: (1) the size of the fishing vessel concerned; (2) the distance from a port of refuge; (3) the provision of electronic position-fixing devices; (4) the provision of rescue services and communication facilities; (5) the provision of meteorological broadcast services; (6) the weather conditions normally prevailing in the waters; (7) the limitations imposed due to ice creation; (8) normal navigational hazards; and (9) traffic conditions”.

46. Global Maritime Distress and Safety System.

47. STCW-F, Chapter I, Regulation 7, paragraph 1.

for such training, (6) training and certification of personnel on board large fishing vessels, (7) requirements for officers in charge of an engineering watch and watch-keeping provisions, (8) promotion of the participation of women in the fishing industry, and (9) human relationships. Resolutions 3, 4, 6 and 7 have led to the 2001 Edition of the FAO/ILO/IMO *Document for Guidance on Training and Certification of Fishing Vessel Personnel*.

Currently, the Convention is under comprehensive review “in order to align [its] standards [...] with the current state of the fishing industry and to make available an effective instrument, which will contribute to addressing the significant challenges of this sector”⁴⁸. The review is expected to deliver an updated text in 2020, after which the adoption procedures will start, resulting in a possible adoption of the amendments in 2023.

Document for Guidance on Training and Certification of Fishing Vessel Personnel, 2001

As said, Resolutions 3, 4, 6 and 7 adopted by the International Conference on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 led to this 2001 edition of the document for guidance, issued by the FAO, IMO and ILO.

The document gives comprehensive guidance on training of fishermen working on board open and decked small fishing vessels (less than 12 metres in length), decked fishing vessels of 12 metres in length and over but less than 24 metres or fishing vessels powered by main propulsion machinery of less than 750 kW propulsion power, and on board fishing vessels of 24 metres in length and over or powered by main propulsion machinery of 750 kW propulsion power or more. It is therefore an important document for the development of appropriate training of fishermen which at the same time fills the gaps, left by the STCW-F Convention regarding fishing vessels less than 24 metres in length or fishing vessels with less than 750 kW propulsion power. The document also elaborates on the standards set out in STCW-F.

48. <http://www.imo.org/en/OurWork/HumanElement/Pages/STCW-F-Convention.aspx>

The Torremolinos International Convention for the Safety of Fishing Vessels, 1977 and related international guidelines

The IMO *Torremolinos International Convention for the Safety of Fishing Vessels, 1977* (SFV) as amended by the *Capetown Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977*, still has not entered into force (!). Only EU Member States Denmark, Germany, and The Netherlands are contracting States to the Capetown Agreement^{49, 50}. However, this Convention, largely on safe construction, equipment and seaworthiness of fishing vessels, which only applies to fishing vessels of 24 metres in length and over, has been implemented in the Union's *acquis* through Directive 97/70/EC (see *Sources of Union law*).

Chapter VIII, Emergency Procedures, Musters and Drills, Regulations 3 and 4, of the Annex to the Convention require and set standards for: practising musters and drills; on-board training and instructions; and training in emergency procedures.

In addition to SFV, the FAO, ILO and IMO have jointly published in two parts, A and B, the voluntary *Code of Safety for Fishermen and Fishing Vessels, 2005*. Part A is sub-titled *Safety and Health Practice*. It applies to all fishing vessels, but it distinguishes between undecked fishing vessels and decked fishing vessels of less than 12 metres in length on the one hand, and fishing vessels of 12 metres in length and over on the other. In its general Section I, Chapter 3, it gives guidance on education, training, safety awareness and related issues. Part B is sub-titled *Safety and Health Requirements for the Construction and Equipment of Fishing Vessels*. It applies to fishing vessels of 24 metres in length and over. Its Chapter VIII on emergency procedures, musters and drills gives guidelines for the training of fishermen on board such fishing vessels.

The organizations have also jointly published the *Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels, 2005*. These guidelines are intended to apply to decked fishing vessels of 12 metres in length and over, but less than 24 metres in length. However, the publication does not give guidelines for the training and certification of fishermen on board fishing vessels it applies to.

49. See: IMO's web site (www.imo.org), Conventions (bottom of page), Status of Conventions.

50. EU Member States Bulgaria, Croatia, Denmark, France, Germany, Ireland, Italy, Lithuania, The Netherlands, Spain, and Sweden are contracting States to the 1993 Protocol.

Finally, the organizations have jointly published the *Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels, 2012*. The publication gives recommendations for safe design, construction and equipment of such fishing vessels. Chapter 12 of it gives recommendations for skipper and other crew training.⁵¹

Contrary to its much more developed shipping equivalent, the Convention does not require the establishment by the fishing vessel owner or the skipper of an appropriate working language to ensure effective crew performance in safety matters. Under the *International Convention for the Safety of Life at Sea, 1974* as amended (SOLAS), each seafarer shall be required to understand and, where appropriate, give orders and instructions and to report back in that working language. If the working language is not an official language of the State whose flag the ship is entitled to fly, all plans and lists required to be posted shall include a translation into the working language.⁵²

The Work in Fishing Convention, 2007 and the Work in Fishing Recommendation, 2007

The ILO *Work in Fishing Convention, 2007* (C188) has entered into force on 16 November 2017. It has entered into force for EU Member States: Estonia, France, and Lithuania.⁵³ The Convention has been transposed for fishermen who are employed or working in an employment relationship into Union law through Directive (EU) 2017/159.

The Convention sets minimum standards for living and working conditions on board fishing vessels. It not only covers fishing vessels operated commercially at sea, but also those operated commercially on rivers, lakes and canals. Subsistence fishing and recreational fishing are excluded from the scope of the Convention. It further covers all fishermen (“fishers”) working aboard these vessels, regardless of their legal status (owner, employee, self-employed person, share fisherman, independent fisherman, partner in a partnership, member of a co-operative, &c) and regardless of the type of remuneration they receive for their work (a wage, a share of (the proceeds of) the catch, or a combination thereof).

51. Chapter 12, Manning, training and competence, pp. 69-70, and Annex XXXIII, Guidance on basic pre-sea safety training, pp. 245-246.

52. SOLAS, Chapter V - Safety of Navigation, Regulation 14 - Ship's Manning, paragraph 3.

53. See: ILO's web site (www.ilo.org), Labour standards, C188, Ratifications by country (bottom of page).

This Convention, too, requires fishermen to be trained, but does not set standards of training and certification. From the extensive preparatory work done by the International Labour Office of the ILO it is understood that C188 was designed not to interfere with the substance of existing international standards and guidance.⁵⁴ In view of all of the above, it should not surprise anyone that the non-binding *Work in Fishing Recommendation, 2007* (R199) therefore ‘confirms’ that ILO Members “take into account generally accepted international standards concerning training and competencies of [fishermen] in determining the competencies required for skippers, mates, engineers and other persons working on board fishing vessels”.⁵⁵

Every fishing vessel, regardless of size, regardless of time spent at sea uninterrupted, regardless of its distance from shore, shall be under the command of a qualified skipper.⁵⁶ This general responsibility of the fishing vessel owner implies that the skipper shall have received training in order to acquire the qualifications or competencies enabling him to safely navigate *and* operate the vessel under his command and be examined.

For every fishing vessel of 24 metres in length and over the competent authority shall establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishermen required.⁵⁷ This requirement does *not* relate to safe *operation* of the vessel, only to safe *navigation*, and it implies that besides the skipper, other fishermen on board shall be qualified as well and that these fishermen too shall have received training in order to acquire the qualifications or competencies enabling them to safely navigate the vessel and be examined. The fishermen referred to here could be substitute skippers, mates, engineers, radio operators, and watchkeeping deck-hands.

Every fishing vessel shall further have at least one fisher on board who is qualified or trained in first aid and other forms of medical care and who has the necessary knowledge to use the medical equipment and supplies for the vessel and crew concerned.⁵⁸

Under the heading *Occupational safety and health and accident prevention*, the Convention additionally requires that fishermen shall be trained in the handling of types of fishing gear they will use and in the knowledge of the fishing operations

54. See: *The Making of C188* at ILO's web site.

55. R199, Item 11 (a).

56. C188, Article 13 (a).

57. C188, Article 14, paragraph 1 (a).

58. C188, Article 29 (b).

in which they will be engaged⁵⁹, and that every fisherman, working aboard fishing vessels of 24 metres in length and over remaining at sea for more than three days, shall have received (pre sea) basic safety training approved by the competent authority.⁶⁰

Finally, the Convention requires on-board training and instruction of all fishermen for the prevention of occupational accidents, occupational diseases and work-related risks⁶¹, and sufficient and reasonable familiarizing of all fishermen on board fishing vessels of 24 metres in length and over normally remaining at sea for more than three days with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned⁶².

59. C188, Article 31, paragraph 1 (b).

60. C188, Article 32, paragraph 3 (b).

61. C188, Articles 8, paragraph 2 (c), and 31, paragraph 1 (a).

62. C188, Article 32, paragraph 3 (c).

Sources of Union law

Introduction

This chapter gives a brief overview of the European Union's legal instruments dealing, directly or indirectly, with training of fishermen for the safety of life and property at sea. Annex II includes an overview of Union instruments on safety at sea in fishing.

The Treaty on the Functioning of the European Union

The Union's fisheries policy is laid down in Part Three, Title III, of the TFEU. The objectives of the common fisheries policy are, *inter alia*, "to increase [fisheries] productivity by promoting technical progress and by ensuring the rational development of [fisheries] production and the optimum utilisation of the factors of production, in particular labour, [...] thus to ensure a fair standard of living for the [fisheries] community, in particular by increasing the individual earnings of persons engaged in [fisheries]".⁶³ Although, with some imagination, optimum realisation of the production factor labour in order to ensure a fair standard of living could involve protection of fishermen's safety, the actual implementation of this objective into the common fisheries policy proves that such interpretation is too farfetched.⁶⁴ Safety at sea in fishing is not one of the objectives of the Union's fisheries policy. It protects fish; not fishermen.

The Union's transport policy is laid down in Part Three, Title VI, of the TFEU. The European Parliament and the Council shall lay down measures to improve maritime transport safety.⁶⁵

63. TFEU, Article 39, paragraphs 1 (a) and (b).

64. *Safety at sea in fishing, Europe's underachievement*, report of the SSDC-F annexed to their letter of 15 September 2014 to Mr Jean-Claude Juncker, at the time President elect of the European Commission, on social responsibilities in sea-fisheries and the role of the European Union (europeche.chil.me/download-doc/57847).

65. TFEU, Article 91, paragraph 1 (c), in conjunction with Article 100, paragraph 2.

The Union's social policy is laid down in Part Three, Title X, of the TFEU. The Union and the Member States, having in mind fundamental social rights such as those set out in the *European Social Charter* signed at Turin on 18 October 1961 and in the 1989 *Community Charter of the Fundamental Social Rights of Workers*, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combatting of exclusion.⁶⁶

With a view to achieving these social objectives, the Union shall support and complement the activities of the Member States, *inter alia*, in the field of “improvement in particular of the working environment to protect workers' health and safety”.⁶⁷ Provisions adopted pursuant to this task shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.⁶⁸

The social policy gives management and labour (“social partners”) at Union level the competence to enter into contractual relations, including agreements. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, *inter alia*, in the matter of improvement in particular of the working environment to protect workers' health and safety, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.⁶⁹

The Union's policy on education, vocational training, youth and sport is laid down in Part Three, Title XII, of the TFEU. The policy does not aim at improvement of the working environment to protect workers' safety and health.

66. TFEU, Article 151, first paragraph.

67. TFEU, Article 153, paragraph 1 (a).

68. TFEU, Article 153, paragraph 4, second hyphen.

69. TFEU, Article 155.

Directive 89/391/EEC

COUNCIL DIRECTIVE of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC)

The legal basis for this Directive was Article 118a of the TEEC. The first paragraph of that Article read: “Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the *harmonisation of conditions* in this area, while maintaining the improvements made” (stress added). The current legal basis for this Directive is Article 153, paragraph 1 (a), of the TFEU: “With a view to achieving the objectives of [the Union’s social policy], the Union shall support and complement the activities of the Member States in [the field] of improvement in particular of the working environment to protect workers’ health and safety”. The Directive applies to workers; the term ‘worker’ is defined as “any person employed by an employer, including trainees and apprentices but excluding domestic workers”, while the term ‘employer’ means “any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment”.

Among general principles on other areas of safety and health the Directive contains general principles concerning the safety and health training of workers. These principles apply for all Directives that are based on this one. The employer is responsible for safety and health related training of his workers and shall carry the cost of training.⁷⁰ Workers concerned shall be trained adequately in the following areas: (a) first aid; (b) fire-fighting; (c) evacuation; and (d) specificities of their workstations or jobs. The training shall be adapted to take account of new or changed risks, and repeated periodically if necessary.⁷¹ The training referred to under (d) shall be given during working time.⁷² It is the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or omissions at work in accordance with his training and the instructions given by his employer.⁷³

70. Directive 89/391/EEC, Articles 6, paragraph 1, and 12, paragraph 4.

71. Directive 89/391/EEC, Article 12, paragraph 1.

72. Directive 89/391/EEC, Article 12, paragraph 4.

73. Directive 89/391/EEC, Article 13, paragraph 1.

Directive 92/102/EEC

COUNCIL DIRECTIVE 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels

The current legal basis for this Directive is Article 153, paragraph 1 (a), of the TFEU⁷⁴. Some of the provisions of this Directive are quite out of date because it still uses gross registered tonnes to categorize vessels while this volume measurement has been replaced by gross tonnes under IMO's *International Convention on Tonnage Measurement of Ships, 1969* which came into force on 18 July 1982 while the rules had to be applied to all ships by 18 July 1994... The Directive applies to workers; the term 'worker' is defined as "any person carrying out an occupation on board a vessel, including trainees and apprentices, but excluding port pilots and shore personnel carrying out work on board a vessel at the quayside" (hence including fishermen who are not employed, like self-employed fishermen and share-fishermen).

Apart from its provisions on medicines and medical equipment, the sick bay, a ship's doctor &c, the Directive requires: (a) that all persons receiving professional maritime training and intending to work on board ship have been given basic training in the medical and emergency measures to be taken immediately in the event of an accident or serious medical emergency; and (b) that the captain and any worker or workers to whom he delegates the use of the medical supplies have received special training updated periodically, at least every five years, taking into account the specific risks and needs connected with the different categories of vessel and in accordance with the general guidelines set out in Annex V to the Directive.⁷⁵

Directive 93/103/EC

COUNCIL DIRECTIVE 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

The current legal basis for this Directive is Article 153, paragraph 1 (a), of the TFEU⁷⁶. The Directive applies to a 'worker', which term is defined as "any person carrying out an occupation on board a [fishing] vessel, including trainees and

74. Originally TEEC, Article 118a.

75. Directive 92/29/EEC, Article 5, sub-paragraphs 2 and 3.

76. Originally TEC, Article 118a.

apprentices but excluding shore personnel carrying out work on board a [fishing] vessel at the quayside and port pilots” (hence including fishermen who are not employed, like self-employed fishermen and share-fishermen).

Apart from other safety and health requirements, the Directive provides for training of workers and detailed training of persons likely to command a fishing vessel. All workers shall be given suitable training on safety and health on board fishing vessels and on accident prevention in particular. The training shall cover in particular fire fighting, the use of life-saving and survival equipment and, for the workers concerned, the use of fishing gear and hauling equipment and the use of various types of signs including hand signs. Such training shall be subject to the necessary updating where this is required by changes in the activities on board.⁷⁷ Persons likely to command a fishing vessel shall be given detailed training on (a) the prevention of occupational illness and accidents on board and the steps to be taken in the event of an accident, and (b) stability and maintenance of the fishing vessel under all foreseeable conditions of loading and during fishing operations, and (c) radio navigation and communications, including procedures.⁷⁸

Directive 97/70/EC

COUNCIL DIRECTIVE 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over

The legal basis for this Directive is Article 100, paragraph 2, of the TFEU⁷⁹: “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions”. This should be understood in the light of Article 91, paragraph 1 (c), of the TFEU⁸⁰: “For the purpose of implementing [a common transport policy], and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down: [...] measures to improve transport safety”.

77. Directive 93/103/EC, Article 9.

78. Directive 93/103/EC, Article 10.

79. Originally TEC, Article 84, paragraph 2, which became TEC, Article 80, paragraph 2.

80. Originally TEC, Article 75, paragraph 1 (c), which became TEC, Article 71, paragraph 1 (c).

The legal basis for this Directive concerning a safety regime for *fishing vessels* of 24 metres in length and over was found in the Union's shared competence to take legislative measures to improve transport safety in *shipping* (!).

This Directive, largely on safe construction, equipment and seaworthiness of fishing vessels, implements the *Torremolinos International Convention for the Safety of Fishing Vessels, 1977* as amended by the *1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977* (a.k.a. the *1993 Torremolinos Protocol*) into European law, including its standards for practising musters and drills, on-board training and instructions, and training of emergency procedures.

In line with the SFV Convention, this Directive does not require the establishment by the fishing vessel owner or the skipper of an appropriate working language to ensure effective crew performance in safety matters. Under SOLAS, each *seafarer* is required to understand and, where appropriate, give orders and instructions and to report back in that working language.

Directive (EU) 2017/159

COUNCIL DIRECTIVE (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche)

The legal basis for this Directive is Article 155, paragraph 2, of the TFEU. The Article provides for social partners agreements at Union level to be transposed into Union law by means of a Council decision on a proposal from the European Commission provided the agreement deals with matters covered by Article 153 of the TFEU.

This Directive sets minimum standards for living and working conditions on board fishing vessels by implementing the Work in Fishing Convention, 2007 for all fishermen who are (a) employed, (b) work in an employment relationship, or (c) other fishermen who are present on the same vessel with fishermen referred to under (a) or (b). Contrary to the Convention, it only covers fishing vessels operated commercially at sea. Subsistence fishing and recreational fishing are excluded from the scope of the Directive.

This Directive, too, requires fishermen to be trained, but does not set standards of training and certification. From the extensive preparatory work done by the International Labour Office of the ILO on the Convention it is understood that

C188 was designed not to interfere with the substance of existing international standards and guidance.⁸¹ In view of all of the above, it should not surprise anyone that the non-binding *Work in Fishing Recommendation, 2007* (R199) therefore ‘confirms’ that ILO Members “take into account generally accepted international standards concerning training and competencies of [fishermen] in determining the competencies required for skippers, mates, engineers and other persons working on board fishing vessels”.⁸² What counts for the Convention in this respect, counts *mutatis mutandis* also for the Directive.

Every fishing vessel, regardless of size, regardless of time spent at sea uninterrupted, regardless of its distance from shore, shall be under the command of a qualified skipper.⁸³ This general responsibility of the fishing vessel owner implies that the skipper shall have received training in order to acquire the qualifications or competencies enabling him to safely navigate *and* operate the vessel under his command and be examined.

For every fishing vessel of 24 metres in length and over the competent authority shall establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishermen required.⁸⁴ This requirement does *not* relate to safe *operation* of the vessel, only to safe *navigation*, and it implies that besides the skipper, other fishermen on board shall be qualified as well and that these fishermen too shall have received training in order to acquire the qualifications or competencies enabling them to safely navigate the vessel and be examined or tested. The fishermen referred to here could be substitute skippers, mates, engineers, radio operators, and watchkeeping deck-hands.

The Directive further refers to Directive 92/29/EEC concerning the training of the skipper and any person to whom he delegates the use of medical supplies.⁸⁵

Under the heading *Occupational safety and health and accident prevention*, the Directive additionally requires that fishermen shall be trained in the handling of types of fishing gear they will use and in the knowledge of the fishing operations

81. See: *The Making of C188* at ILO's web site.

82. R199, Item 11 (a).

83. Directive (EU) 2017/159, Annex, Article 10, paragraph 1.

84. Directive (EU) 2017/159, Annex, Article 10, paragraph 2.

85. Directive (EU) 2017/159, Annex, Article 28 (b). This provision differs from C188, Article 29 (b).

in which they will be engaged⁸⁶, and that every fisherman shall have received (pre sea) basic safety training approved by the competent authority.⁸⁷

Finally, the Convention requires for all fishermen on-board training and instruction for the prevention of occupational accidents, occupational diseases and work-related risks⁸⁸, and sufficient and reasonable familiarizing with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned⁸⁹.

It is important to recognize that, through this Directive, under Union law, Member States are now forced to adopt legislation on training and certification of fishermen before 15 November 2019⁹⁰; even for fishermen working on board of fishing vessels less than 24 metres in length. In view of their flag State duties, that legislation should be based on international standards adopted in this field...⁹¹

Directive 2005/36/EC

DIRECTIVE 2005/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 September 2005 on the recognition of professional qualifications

The current legal basis for this Directive are the Articles 46, 53, paragraph 1, and 62 of the TFEU relating to free movement of persons and services.

The objective of this Directive for the mutual recognition of diplomas, certificates and other evidence of formal qualifications is the abolition of obstacles to the free movement of persons. For nationals of the Member States, this includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their profes-

86. Directive (EU) 2017/159, Annex, Article 34 (b).

87. Directive (EU) 2017/159, Annex, Article 35, paragraph 3 (b). This requirement differs from C188, Article 32, paragraph 3 (b), in that it applies to all fishing vessels instead of fishing vessels of 24 metres in length and over remaining at sea for more than three days.

88. Directive (EU) 2017/159, Annex, Articles 5, paragraph 3 (c), and 34 (a).

89. Directive (EU) 2017/159, Annex, Article 35, paragraph 3 (c). This requirement differs from C188, Article 32, paragraph 3 (c), in that it applies to all fishing vessels instead of fishing vessels of 24 metres in length and over remaining at sea for more than three days.

90. Directive (EU) 2017/159, Annex, Article 4, paragraph 1.

91. Directive (EU) 2017/159, Annex, Article 3, however, offers Member States, for a *limited* period of time (maximum 5 years), some flexibility for *limited* categories of fishermen or fishing vessels.

sional qualifications.⁹² This Directive therefore establishes rules according to which a Member State, which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications, shall recognise professional qualifications obtained in one or more other Member States and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.⁹³

This bulky Directive gives an exhaustive set of rules for the recognition of professional qualifications. For the purpose of this paper it would go too far to discuss the entire set. Assessment of the Directive leads to the conclusion that professional qualifications of fishermen shall be recognized in accordance with the rules as set out in Title III of the Directive, Freedom of establishment, Chapter I, General system for the recognition of evidence of training.

For fishermen, the general system of recognition comes down to examination of their certificates by the competent authority of the flag State and the legislation on basis of which these were issued, followed by, to the fisherman's choice, completion of an adaptation period of up to three years or an aptitude test. Due to the great variety and complexity of requirements between Member States or hampered access to these requirements, the recognition procedure often results in the fisherman having to follow a partial or full training programme of the flag State in a language he (or she) often does not command at a level for successful training... The Directive therefore does not promote free movement of fishermen and it does not promote development of standardized levels of training for safety at sea in fishing.

Decision (EU) 2015/799

COUNCIL DECISION (EU) 2015/799 of 18 May 2015 authorising Member States to become party, in the interest of the European Union, to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, of the International Maritime Organization

The legal basis for this Decision are the Articles 46, 53, paragraph 1, and 62 of the TFEU; the same 'free movement' legal basis as was used for Directive 2005/36/EC on the recognition of professional qualifications.

This Decision covers the subject matter of the present paper: Training and certification of fishermen and recognition of their certificates. It authorises Mem-

92. Directive 2005/36/EC, consideration (1).

93. Directive 2005/36/EC, Article 1, first paragraph.

ber States to become party to the STCW-F Convention in respect of those parts that fall under the competence of the Union.⁹⁴ The Member States are ‘invited’ to take the necessary steps to deposit their instrument of accession to the Convention with the Secretary-General of the IMO within a reasonable time, if possible, by 23 May 2017. The Commission shall present a report to the Council reviewing the progress of accession by 23 May 2018. Since the Decision was taken on 18 May 2015 only Poland (28 July 2015), Portugal (23 January 2017), Romania (27 February 2018), and Belgium (10 May 2018) have acceded to the Convention and so far the Commission has not presented its report.⁹⁵

For the purpose of the present paper, the following recitals introducing the Articles of the Decision are of particular interest:

- (3) The Convention represents a significant contribution to the fishing sector at international level by promoting the safety of life and property at sea, thereby also contributing to the protection of the marine environment. It is therefore desirable that its provisions be implemented as soon as possible.
- (4) Fishing at sea is one of the most hazardous professions, therefore appropriate training and qualifications are an essential means by which to cut the number of accidents. The embarking of personnel on board Member States fishing vessels should in any case be done without prejudice to maritime safety.
- (7) Chapter I, Regulation 7 of the Annex to the Convention falls 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 affects the Treaty provisions and secondary Union law, in particular Directive 2005/36/EC of the European Parliament and of the Council, in so far as Union citizens who possess relevant certificates issued by a Member State or by a third country are concerned.

94. Decision (EU) 2015/799, Article 2.

95. The Netherlands is close to accession; presumably early 2019.

Directive 2008/106/EC

*DIRECTIVE 2008/106/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008 on the minimum level of training of seafarers (recast)*⁹⁶

The legal basis for this Directive is Article 100, paragraph 2, of the TFEU⁹⁷: “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions”. This should be understood in the light of Article 91, paragraph 1 (c) of the TFEU⁹⁸: “For the purpose of implementing [a common transport policy], and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down: [...] measures to improve transport safety”.

The first directive implementing the *International Convention on Standard of Training, Certification and Watchkeeping for Seafarers, 1978* (STCW-S) was Directive 94/ 58/EC of 22 November 1994. It was replaced by Directive 2001/25/EC of 4 April 2001, which in turn was replaced Directive 2008/106/EC of 19 November 2008. Directive 2012/35/EU of 21 November 2012 updated the latter.

With a view to safety at sea in *fishing* these recitals introducing the Articles of the successive *shipping* directives are relevant:

Directive 94/58/EC

- (–) Whereas in its resolution of 8 June 1993 on a common policy on safe seas⁹⁹, the Council set the objective of removing substandard crews and gave priority to Community action aiming at enhancing training and education by developing common standards for minimum training levels of key personnel, including the question of a common language on board Community vessels;

96. The first Directive implementing STCW-S was Directive 94/58/EC of 22 November 1994, that was replaced by Directive 2001/25/EC of 4 April 2001, and subsequently by Directive 2008/106/EC of 19 November 2008. Directive 2012/35/EU of of 21 November 2012 updated the latter.

97. Originally TEC, Article 80, paragraph 2.

98. Originally TEC, Article 71, paragraph 1 (c).

99. *Official Journal of the EC (OJ)*, No. C271 of 7 October 1993 , p. 1

- (–) Whereas the standards of training for the award of vocational competency certificates to seafarers vary from one Member State to another; whereas such a diversity of national laws in the area of training covered by this Directive does not ensure the consistent level of training required in the interests of maritime safety;
- (–) Whereas the mutual recognition of diplomas and certificates provided for under the general systems Directives¹⁰⁰ does not always ensure a standardized level of training for all seafarers serving on board vessels flying the flag of a Member State [...]; whereas this is, however, vital from the viewpoint of maritime safety;
- (–) Whereas it is therefore essential to define a minimum level of training for seafarers in the Community; whereas it is appropriate that the action in this field should be based on the standards of training already agreed at international level, namely the IMO Convention on Standards of Training, certification and Watchkeeping for Seafarers, 1978, (STCW-S Convention); whereas all Member States are parties to that Convention;
- (–) Whereas measures should be taken to ensure that seafarers holding certificates issued by third countries have a level of competence commensurate with that required by the STCW-S Convention.

Directive 2001/25/EC

- (3) In its conclusions of 25 January 1993 on maritime safety and pollution prevention in the Community, the Council noted the importance of the human element in the safe operation of ships.

Directive 2008/106/EC

- (2) Actions to be taken at Community level in the field of maritime safety and pollution prevention at sea should be in line with internationally agreed rules and standards.
- (3) In order to maintain and develop the level of knowledge and skills in the maritime sector in the Community, it is important to pay appropriate attention to maritime training and the status of seafarers in the Community.

100. Currently Directive 2005/36/EC.

- (4) A consistent level of training for the award of vocational competency certificates to seafarers should be ensured in the interests of maritime safety.
- (8) Member States may establish standards higher than the minimum standards laid down in the STCW-S Convention and this Directive.

Directive 2012/35/EU

- (5) Improved training for seafarers should cover proper theoretical and practical training so as to ensure that seafarers are qualified to meet [...] safety standards and are able to respond to hazards and emergencies.
- (13) [...]. The quality of training for seafarers is important for the competitiveness of this sector and for attracting Union citizens, in particular young people, to the maritime professions.
- (21) Since the objective of this Directive, namely the alignment of the current rules of the Union with international rules on training and certification of seafarers, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Directive 2005/45/EC

DIRECTIVE 2005/45/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States and amending Directive 2001/25/EC

The current legal basis for this Directive is, again, the maritime transport safety Article 100, paragraph 2, of the TFEU¹⁰¹.

With a view to safety at sea in fishing these recitals introducing the Articles of this Directives are relevant:

101. Originally TEC, Article 80, paragraph 2.

- (1) In its conclusions of 5 June 2003 on improving the image of Community shipping and attracting young people to the seafaring profession, the Council highlighted the necessity of fostering the professional mobility of seafarers within the European Union, with particular emphasis on recognition procedures for seafarers' certificates of competency, while ensuring thorough compliance with the requirements of the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 [...].
- (2) Maritime transport is an intensively and rapidly developing sector of a particularly international character. Accordingly, in view of the increasing shortage of Community seafarers, the balance between supply and demand in personnel can be maintained more efficiently at the Community, rather than the national level. It is therefore essential that the common transport policy in the field of maritime transport be extended to facilitate the movement of seafarers within the Community.
- (11) Regulation (EC) No 1406/2002, established a European Maritime Safety Agency (the Agency), for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution from ships. One of the tasks assigned to the Agency is to assist the Commission in the performance of any task assigned to it by Community legislation applicable to the training, certification and watchkeeping of ships' crews.
- (12) The Agency should therefore assist the Commission in verifying that Member States comply with the requirements laid down in this Directive and Directive 2001/25/EC.
- (15) Since the objective of this Directive, namely the mutual recognition of the seafarers' certificates issued by the Member States, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

The competences of the Union

The Union has several types of legislative powers:

When the Treaties¹⁰² confer on the Union *exclusive competence* in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.¹⁰³

When the Treaties confer on the Union a *competence shared with the Member States* in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.¹⁰⁴ If the Union wishes to take legislative action in a specific area where shared competence has been conferred upon the Union, the principles of subsidiarity and proportionality apply.¹⁰⁵ Under the principle of subsidiarity, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.¹⁰⁶ Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.¹⁰⁷

In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.¹⁰⁸

102. The *Treaty on European Union* (TEU) and the *Treaty on the Functioning of the European Union* (TFEU).

103. TFEU, Article 2, paragraph 1.

104. TFEU, Article 2, paragraph 2.

105. TEU, Article 5, paragraph 1, second sentence.

106. TEU, Article 5, paragraph 3.

107. TEU, Article 5, paragraph 4.

108. TFEU, Article 2, paragraph 5.

As one of the parties to UNCLOS, the European Union has certain responsibilities for ensuring safety at sea in compliance with internationally agreed standards such as the STCW-F Convention.¹⁰⁹ With regard to matters concerning fisheries (excluding the conservation of marine biological resources), social policy (for the aspects defined in the TFEU), and (maritime) transport, the Union has shared competence with its Member States.¹¹⁰ The Union therefore shares its competences concerning safety at sea with its Member States.

Part Three, Union Policies and Internal Actions, Title III, Agriculture and Fisheries, of the TFEU does not cover safety at sea in fishing. Hence, the Union does not have specific competence in this area.

Part Three, Title VI, Transport, covers improvement of maritime transport safety.¹¹¹ The Union has a shared competence in this area¹¹², but has taken legislative action on the minimum level of training of seafarers and on the mutual recognition of seafarers' certificates issued by Member States.¹¹³ On this very same legal basis the Union set up a harmonised safety regime for fishing vessels of 24 metres in length and over.¹¹⁴

Part Three, Title X, Social Policy, covers, *inter alia*, improvement in particular of the working environment to protect workers' health and safety.¹¹⁵ The Union has a shared competence in this area¹¹⁶; the European Parliament and the Council may, with some restrictions, adopt, by means of directives, minimum requirements for gradual implementation¹¹⁷.

109. In the *Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement to the implementation of Part XI of the Convention* the Council has explained that the Community – now European Union – has exclusive competence for certain matters and shares competence with its Member States for certain other matters (Council Decision 98/392/EC of 23 March 1998). With regard to flag State duties concerning safety at sea, the [Union] “has exclusive competence only to the extent that such provisions of the Convention or legal instruments adopted in implementation thereof affect common rules established by the Community. When Community rules exist but are not affected, in particular in cases of Community provisions establishing only minimum standards, the Member States have competence, without prejudice to the competence of the Community to act in this field. Otherwise competence rests with the Member States”.

110. TFEU, Article 4, paragraph 2 (b), 2 (d), and 2 (g) in particular.

111. TFEU, Article 100, paragraph 2, in conjunction with Article 91, paragraph 1 (c).

112. TFEU, Article 4, paragraph 2 (g).

113. Currently Directives 2008/106/EC and 2005/45/EC.

114. Directive 97/70/EC.

115. TFEU, Article 153, paragraph 1 (c).

116. TFEU, Article 4, paragraph 2 (b).

117. TFEU, Article 153, paragraph 2 (b).

The Union also has competence in the areas of education and vocational training, but this is only a competence to support, coordinate or supplement the actions of Member States.¹¹⁸ “[These] areas are not regarded as ‘shared competences’ in the sense of Art. 2(2) TFEU. Within this distinct category of ‘supporting’ competences, the Union may take action but its legally binding acts may not entail harmonisation of Member States’ laws or regulations (Art. 2(5) TFEU). The provision according to which the Union’s action in these areas shall not supersede Member States’ competence indicates that, even if Member States do not adopt rules that conflict with provisions of Union law (principle of primacy), the Union’s action is not to restrict the Member States’ regulating power in the areas concerned [...]”¹¹⁹

118. TFEU, Article 6 (e).

119. Koen Lenaerts and Piet Van Nuffel, *European Union Law*, published by Sweet & Maxwell, London, 2011, third edition, p. 130.

The competences of the social partners

Training for improvement of safety and health

On basis of Article 155 of the TFEU social partners at Union level have the competence to enter into agreements. If such an agreement deals with matters covered by Article 153 of the TFEU, the social partners may ask the European Commission to propose to the Council transposition of the agreement, through a Council Decision, into a legal instrument of the Union, for instance a Directive. The social partners in sea-fishing, having an undeniable interest in improving safety at sea in fishing, discussed the possibility of entering into an agreement for implementation of STCW-F into the Union's *acquis* with the Commission several times. In their meeting of 9 February 2018 they asked for an official legal opinion in this matter. This is what the Commission wrote:

Brussels, 3 March 2018
Ref. Ares(2018)1285108

Subject: Transposition of the STCW-F Convention via a collective agreement of the social partners according to Articles 154-155 TFEU

Following discussions on the above issue in the Sectoral Social Dialogue Committee sea fisheries on 9 February 2018 I would like to inform you of the position of the Commission services.

According to Article 155 TFEU, EU social partners are free to enter into negotiations with a view to concluding an agreement. Once they have concluded the agreement, they can decide to implement it autonomously, or to invite the Commission to present a proposal to implement their agreement in EU law, in accordance with Article 155(2) TFEU.

However, the simple fact that the social partners are implied does not automatically give access to the procedure laid down in Article 155 TFEU. For this to be possible, the subject matter of the agreement has to fall within the scope of Article 153 TFEU. This is not the case in this matter as most of the articles of the convention concern professional/vocational qualifications and training issues (certification, minimum knowledge) for fishermen. These subjects are not covered by Article 153. Consequently, with regard to the STCW-F Convention, we consider the procedure of Article 155 not to be appropriate.

It always remains possible however to follow-up on an initiative of the social partners regarding the STCW-F by an own legislative proposal of the Commission for the mutual recognition of training of fishermen, in line with the STCW-F.

Council Decision 2015/799 of 18 May 2015 authorises the Member States to ratify the Convention in the interest of the Union in respect of those parts falling under the competence of the Union (Council decision 2015/799 of May 2015).

We are aware of the fact that the STCW-F Convention was ratified so far only by a small number of Member States. At the same time, there is a Union obligation on the strict observance and the development of international law in Article 3(5) TEU.

The Commission is therefore currently taking steps to promote ratification by Member States of international instruments relevant for fisheries, such as the STCW-F, the Work in Fishing Convention C188 and the Cape Town Agreement. The Commission is also considering the adoption of all measures deemed appropriate to transpose these conventions, or those parts of the conventions that have not been transposed, into EU law.

On the basis of the Council Decision authorising Member States to become party to the STCW-F Convention¹²⁰ the Commission will produce a report on the process of accession to the Convention by May 2018. Since competence for ratification lies with the Member States we invite also social partners and their national organisations to ask their respective Member State to ratify.

Was signed:

European Commission

Directorate-General for Maritime Affairs and Fisheries

Fisheries Policy Mediterranean and Black Sea

Veronika Veits, Director

For the purpose of this paper, the key message of this Commission letter is of course: “[...] the simple fact that the social partners are implied does not automatically give access to the procedure laid down in Article 155 TFEU. For this to be possible, the subject matter of the agreement has to fall within the scope of Article 153 TFEU. This is not the case in this matter as most of the articles of the convention concern professional/vocational qualifications and training issues (certification, minimum knowledge) for fishermen. These subjects are not covered by Article 153. Consequently, with regard to the STCW-F Convention, we consider the procedure of Article 155 not to be appropriate”.

120. Decision (EU) 2015/799.

If the Commission wishes to approach training and certification of fishermen from the areas of education and vocational training, the goal of a standardized (harmonised) level of training for all fishermen serving on board fishing vessels flying the flag of a Member State in the interest of ensuring safety at sea in fishing cannot be achieved: The Union's competence to support, coordinate or supplement the actions of the Member States with regard to education and vocational training prevents it from taking measures aiming at harmonisation.¹²¹ That approach would be a dead-end.

The goal of all of the instruments discussed briefly in this paper is ensuring safety of life and property at sea in fishing; one of the means for reaching this goal is training. "Every State shall take such measures for ships flying their flag as are necessary to ensure safety at sea with regard, *inter alia*, to [...] the training of crews", says UNCLOS.¹²² The STCW-F convention is nothing but a means to improve the working environment for protection of fishermen's health and safety by making their work at sea safer, but not only for them, also for those who share the seas with them, namely seafarers, other off-shore workers¹²³, and passengers.

The essence of work on board a fishing vessel is *fishing*, catching fish and other biological resources of the sea for food supply. This counts as much for skippers as it does for replacement skippers, mates, engineers, radio-officers, and deckhands. Fishermen *do not learn* fishing, their vocation, by following an STCW-F training. Although STCW-F 'teaches' them how to manoeuvre and handle their vessels with fishing gear for safe navigation, it does not teach them where to find fish, how to use their fish finding equipment; it does not teach them which fishing method to choose and how to use, maintain, repair their fishing gear, how to make and repair their nets, pots or traps, how to use ropes, lines, cables, how to trim and use trawl doors or otter boards¹²⁴; it does not teach them how to recognize different species of fish; it does not teach them how to determine the quality of the fish caught; it does not teach them how to handle fish (other than in relation to safe working practices), how to sort and grade it; it does not teach them how to process fish, how to preserve it by stripping, gutting, salting, drying, cooking, cooling, freezing, and other preservation methods; it does not teach them how to keep their

121. TFEU, Article 2, paragraph 5, second sentence.

122. UNCLOS, Article 94, paragraph 3, opening words.

123. Think, for instance, of collisions between fishing vessels and oil rigs.

124. See: Mike Montgomerie, *Basic fishing methods, A comprehensive guide to commercial fishing methods*, Seafish, Authority on seafood, Edinburgh/Grimsby, August 2015. Google: Basic Fishing Methods.

vessels and fish holds in hygienic conditions in line with HACCP¹²⁵ standards; it does not teach them how to comply with the insanely complicated rules of the common fisheries policy and the large body of legislation that comes with it... In other words, STCW-F does not teach them fisheries skills. STCW-F 'only' teaches them how to safely sail their vessels. A quick look at Annex III to this paper or at the Convention's text itself will provide the reader with a clear view of what the Convention covers (it is not a bulky document). The STCW-F certificates fishermen need to prove towards authorities, fishing vessel owners, and colleagues that they can do that, safely sail their vessels in order to protect their own safety and health and that of the other users of their working environment, the seas.

If anything falls within the scope of Article 153, paragraph 1 (a), of the TFEU, it certainly is making good use of this *training for safety* instrument: the STCW-F Convention. On the broad scope of the (original) provision: "There is nothing in the wording of Article 118a [TEEC]¹²⁶ to indicate that the concepts of 'working environment', 'safety' and 'health' as used in that provision should, in the absence of other indications, be interpreted restrictively, and not as embracing *all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment*, [...]. On the contrary, the words 'especially in the working environment' militate in favour of a *broad interpretation* of the powers which Article 118a confers upon the Council for the protection of the health and safety of workers. Moreover, such an interpretation of the words 'safety' and 'health' derives support in particular from the preamble to the Constitution of the World Health Organization to which all the Member States belong. Health is there defined as a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity" (stress added).¹²⁷ "Confirmation of the view favouring a *broad interpretation* [...] may be found in the origin of Article 118a, namely in a proposal made by the Kingdom of Denmark at the Inter-Governmental Conference on the Single Act. The concept of 'working environment' ('arbejdsmiljø') in Danish law is a very broad one, covering the performance of work and conditions

125. Hazard Analysis and Critical Control Points.

126. TEEC, Article 118a, paragraph 1: "Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area, while maintaining the improvements made". The Article was replaced by TFEU, Article 153, paragraph 1 (a). Although the wording of the latter differs from the former, the substance of both provisions is equal, and equally vague.

127. Judgment of the Court of Justice. United Kingdom of Great Britain and Northern Ireland v Council of the European Union. Council Directive 93/104/EC concerning certain aspects of the organization of working time - Action for annulment. Case C-84/94. Juridical ground 15.

at the workplace, as well as technical equipment and the substances and materials used. Accordingly, the relevant Danish legislation is not limited to classic measures relating to safety and health at work in the strict sense, but also includes measures concerning working hours, psychological factors, the way work is performed, *training in hygiene and safety*, and the protection of young workers and worker representation with regard to security against dismissal or any other attempt to undermine their working conditions. The concept of ‘working environment’ is not immutable, but reflects the social and technical evolution of society” (stress added).¹²⁸ “Specific attention should [...] be given to the quality of prevention services, health and safety training, as well as other tools to ensure a better application of health and safety standards.”¹²⁹

STCW-F’s shipping equivalent, the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* (STCW-S), was transposed into Union law after the Council had adopted, in June 1993, a resolution on a common policy on safe seas¹³⁰. The legal basis for the Directive concerned, 94/58/EC of 24 November 1994, was Article 84, paragraph 2, of the *Treaty establishing the European Community* (TEC), which currently is Article 100, paragraph 2, of the TFEU. The resolution followed after the Commission had presented its communication *A common policy on safe seas* on 24 February 1993.¹³¹ The paper showed that ship accidents went hand in hand with, often fatal, human accidents. Ship-losses went hand in hand with loss of life. About 60% of all ship accidents were caused by human error. Human error, due to lack of adequate training, lack of sufficient implementation and enforcement, by all parties concerned, both public and private, of internationally agreed standards of training, and lack of harmonization. Measures were needed to address problems associated with human error. On the basis of the minimum requirements to be adopted by the Community, appropriate programmes should be put in place to produce the necessary improvements as rapidly as possible. The STCW-S Convention, developed under the auspices of the ILO and the IMO, was the existing instrument for an international response to the need for qualified crews and officers. However, the facts and figures presented in

128. Opinion of Advocate General Léger, delivered on 12 March 1996, in Case C-84/94, Nr. 42.

129. COM(2005) 33 final, Communication from the Commission on the Social Agenda, Brussels, 9 February 2005, p. 7. See also: COM(87) 520 final, Commission Communication on its Programme Concerning Safety, Hygiene and Health At Work, in particular paragraph 6 on Training, Brussels, 23 October 1987.

130. OJ, No. C 271 of 7 October 1993, p. 1.

131. COM (93) 66 final.

the communication showed that the STCW-S Convention and its level of application needed to be largely improved (which actually happened thoroughly afterwards through the 1995 and 2010 amendments of the Convention). Where Member States did not take their responsibilities for safety at sea in shipping seriously enough, the European Community did by implementing the STCW-S Convention into its *acquis* in 1994. The subsidiarity principle in action. Although the legal basis for the Directive does not specifically mention safety at sea, this background does link it inextricably to the Union's statutory task to lay down measures to improve transport safety¹³².

Looking at the following recitals introducing the Articles of the current Directive implementing the, from time to time amended STCW-S Convention, 2008/106/EC of 19 November 2008 as amended by Directive 2012/35/EU of 21 November 2012, one can only acknowledge that the goal of improving safety of life and property at sea, the working environment of seafarers, on basis of internationally agreed standards firmly underlies the Union's legal actions in shipping:

- (2) Actions to be taken at Community level in the field of maritime safety and pollution prevention at sea should be in line with internationally agreed rules and standards.
- (5) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications applies to maritime occupations covered by this Directive. It will help promote compliance with the obligations laid down in the Treaty abolishing obstacles to the free movement of persons and services between Member States.¹³³
- (6) The mutual recognition of diplomas and certificates provided for under Directive 2005/36/EC does not always ensure a standardised level of training for all seafarers serving on board vessels flying the flag of a Member State. This is, however, vital from the viewpoint of maritime safety.
- (7) It is therefore essential to define a minimum level of training for seafarers in the Community. That level should be based on the standards of training already agreed at international level, namely the International Maritime Organisation (IMO) Convention on Standards of Training, Certifica-

132. TFEU, Article 91, paragraph 1 (c), in conjunction with TFEU, Article 4.

133. For fishermen this is a questionable observation!

tion and Watchkeeping for Seafarers, 1978 (STCW-S Convention), as revised in 1995¹³⁴. All Member States are Parties to that Convention.

It is true that for maritime transport, the Union has chosen a legal basis that is linked to the objectives of the Union's transport policy, in particular to improvement of (maritime) transport safety¹³⁵, and not a legal basis that is linked to the objectives of the Union's social policy, in particular to improvement of the working environment to protect workers' health and safety¹³⁶. In the absence of a legal basis under the Union's fisheries policy¹³⁷, this same 'maritime' legal basis could be used for implementation of STCW-F. After all, it was done before for Directive 97/70/EC. However, TFEU, Article 153, paragraph 1 (a), is as much a proper legal basis for it as TFEU, Article 100, paragraph 2, is. The social policy offers perhaps an even better legal basis for fishing because the recitals introducing the Articles of Directive 97/70/EC do not explain why or how Union action in the sector of maritime transport aiming at the improvement of maritime safety¹³⁸ can aim at safety at sea in fishing as well. Perhaps the lawmakers thought it so obvious that there was no reason to explain it: As fishing vessels share the seas with ships in maritime transport they influence the latter's safety and if anything goes wrong with a fishing vessel it might have a detrimental impact on ships in maritime transport. It is a chillingly cynical thought, because not concerns about the safety and health of fishermen then led to the protection offered by the Directive, but the safety and health of *seafarers*. As if fishermen are second-class European citizens. The first and foremost reason for implementing STCW-F in the Union's *acquis* should therefore be protection of fishermen's safety and health. Therefore, the legal basis offered by the Union's social policy is far more preferable than the one offered by the Union's transport policy. This should not pose any legal problem, even if the Convention is about *training* and *certification* in order to ensure safety at sea in fishing: As this paper shows, the Directives, adopted with "improvement in particular of the working environment to protect worker's health and safety" as their legal bases, 89/391/EEC, 92/29/EEC, and 93/103/EC, all introduce training as a means for protection of workers' safety and health. Directive (EU) 2017/159,

134. The Convention was again further revised in 2010 through the so-called Manila Amendments.

135. TFEU, Article 100, paragraph 2, in conjunction with Article 91, paragraph 1 (c).

136. TFEU, Article 153, paragraph 1 (a), in conjunction with Article 151.

137. Which is a sad shortcoming of the TFEU.

138. Directive 97/70/EC, recital (1).

which finds its legal basis in the Union's social policy as well and implements a social partners agreement (!), is no exception to this.

As TFEU, Article 153, paragraph 1 (a), falls within the limits set out in TFEU, Article 155, paragraph 2, the social partners in sea-fisheries do have the statutory competence to enter into an agreement with a view to its implementation in the Union's *acquis* through a Council Decision. And there is back-up for it.

The European Parliament, for instance, (a) “contrasts the commendable record of the Member States in ratifying labour conventions relating to seafarers with their exceedingly poor record in ratifying conventions relating to fishers, and urges them to ratify the relevant instruments promptly, including ILO C188, the Cape Town Agreement and the STCW-F”, (b) “congratulates the social partners on their success in the use of Article 155 of the *Treaty on the Functioning of the European Union* (TFEU) to negotiate Council Directive (EU) 2017/159, which partially implements ILO C188, while regretting that this does not cover self-employed fishers”, (c) “urges the Commission to complete the process by putting forward a proposal for a complementary directive that includes enforcement provisions, as it has done for shipping”, and (d) “urges the Commission, in this connection, to initiate procedures for the use of Article 155 TFEU with respect to the STCW-F in order to improve safety at sea in fishing, which is widely recognised to be among the most dangerous professions in the world” (stress added).¹³⁹

The social partners, however, knowing their limited resources, view action from their side as a last resort should the European Commission not take up the gauntlet soon enough. There are some concerns about the target group they could regulate on though. Their possibilities were limited to employed persons and persons working in an employment relationship when they made their agreement on implementation of C188.¹⁴⁰ However, Directives 92/29/EEC and 93/103/EC, that have the same legal basis as a possible social partners agreement on implementation of STCW-F will have, Article 153, paragraph 1 (a), of the TFEU, apply to workers, while these Directives define the term ‘worker’ as “any person carrying out an occupation on board a [fishing] vessel, including trainees and apprentices but excluding shore personnel carrying out work on board a [fishing] vessel at the quayside and port pilots” *i.e.* including fishermen who are not employed, like self-employed fishermen and share-fishermen. All in all, it would be much more preferable if the European Commission would take action. In that respect, the

139. European Parliament resolution of 30 May 2018 on the implementation of control measures for establishing the conformity of fisheries products with access criteria to the EU market.

140. Directive (EU) 2017/159, Annex, Recital (12) introducing the Articles of the social partners agreement.

letter presented at the start of this chapter, apart from the message quoted above, also conveys a hopeful one: “It always remains possible however to follow-up on an initiative of the social partners regarding the STCW-F by an own legislative proposal of the Commission for the mutual recognition of training of fishermen, in line with STCW-F”.

Union minimum standards on training, certification and watchkeeping for fishermen

Safety at sea in fishing; the state of affairs

At best, the situation in fishing today is not much different from the late 1900s situation in shipping that was reported on in the 1993 paper *A common policy on safe seas* referred to in the previous chapter: Fishing rates among the most hazardous sectors, even in the European Union.

As has been referred to in the introduction chapter of the present paper, fatality rates are too high. EMSA's *Annual overview of marine casualties and incidents 2017*¹⁴¹ on basis of Directive 2009/18/EC¹⁴² shows that among the Union's maritime sectors, fishing is the most hazardous maritime sector. The number, for instance, of marine casualties¹⁴³ in fishing is 4,4 times higher than that of maritime transport and 7,6 times higher than that of maritime passenger services. EMSA's statistics show that in fishing there were 55 fatalities and 184 injured persons *reported* in 2016. The overview concerns fishing vessels of 15 metres in length¹⁴⁴ or over, which means that a very large number of EU fishing vessels are not even included in the overview. Human error is the main cause of marine casualties. Adequate training on basis of internationally agreed standards is widely promoted as one of the remedies against marine casualties caused by human error.

141. www.emsa.europa.eu/emcip/items.html?cid=141&id=3156

142. Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector.

143. The term 'marine casualty' includes: (a) the death of, or serious injury to, a person; (b) the loss of a person from a ship; (c) the loss, presumed loss or abandonment of a ship; (d) material damage to a ship; (e) the stranding or disabling of a ship, or the involvement of a ship in a collision; (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; and (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.

144. No definition of the term 'length' is given in the Directive. So, here 'length' could mean length (L), length overall (LOA), length between perpendiculars (LBP). These lengths vary significantly from each other.

The report *Research for PECH Committee – Training of Fishers*¹⁴⁵ shows that in EU fishing today there is no harmonized system for adequate training of fishers while at the same time fishing vessel crews become more and more European and even international. Member States' safety training and certification requirements for fishermen are complicated and vary significantly between Member States. Implementation and enforcement of training standards is very poor. Implementation of internationally agreed standards on training and certification is even poorer (see Annex I to the present paper). Member States do not seem to have an appetite for acceding to STCW-F while harmonized standards are indispensable for improvement of the working environment of fishermen with a view to their safety and health. Assessment of qualifications acquired outside the flag State is virtually impossible due to the great variety of requirements between Member States *having* training requirements for fishermen, and the difficulty of getting access to these requirements. Directive 2005/36/EC therefore hardly helps fishermen and fishing vessel owners receiving recognition of foreign professional qualifications and it does not promote the development of standardized levels of training for safety at sea in fishing. This complexity is an obstacle to ensuring safety at sea in fishing and to the free movement of fishermen, and it makes it hard to comply with statutory training and certification requirements. On the other hand, it may be contributing to illegal labour and worker exploitation in the fishing sector.¹⁴⁶

This situation calls for Union legislative action!

As observed in the chapter on sources of Union law, Directive (EU) 2017/159 forces Member States to adopt legislation on training and certification of fishermen before 15 November 2019¹⁴⁷; even for fishermen working on board of fishing vessels less than 24 metres in length. In view of their flag State duties, that legislation should be based on international standards adopted on safety at sea in fishing.

The STCW-F Convention covers all fishermen with regard to basic safety training. It does not cover all fishermen concerned with regard to safety training for navigation and propulsion of fishing vessels. STCW-F limits the standards for safe

145. Roderick Ackermann, Nicolò Franceschelli, Marga Sanz, George Maridis, and Veronika Kubenova of Blomeyer & Sanz, Bopp van Dessel and Tim Haasnoot of ProSea, Yvon Le Roy of Secoterg France, and Lisa Borges of FishFix, *Research for PECH Committee – Training of Fishers*, European Parliament, Policy Department for Structural and Cohesion Politics, Brussels, July 2018.

146. Illegal labour and abuse of migrant fishermen is a growing problem within the Union's fishing sector. See *Resolution 2017-01 of the European Union Social Dialogue Committee in Sea-Fisheries of 10 May 2017 on abuses of migrant fishers in a part of the Union's fishing sector* (europeche.chil.me/attachment/416ae1a1-da27-45f2-b94c-c1af68eb35ba).

147. Directive 93/103/EC, Articles 9 and 10, and Directive (EU) 2017/159, Annex, Article 4, paragraph 1.

navigation to fishing vessels of 24 metres in length or over and it limits the standards for safe propulsion to fishing vessels with propulsion power of 750 kilowatts or over. One could argue, however, that its standards on watchkeeping also apply to all fishing vessels. Given the current situation, it should be considered to also adopt training and certification standards at Union level for all fishing vessels not covered by STCW-F's Chapter II (on certification of skippers, officers, engineer officers and radio operators), and for large fishing vessels. Such standards should be based on available, international guidelines and guidance.

With a view to the increasing international dimension of crewing in sea-fisheries, legislators at Union level should further take into consideration the gradual introduction of a requirement on establishment of an appropriate working language on board fishing vessels with crews of mixed nationalities ensuring effective crew performance in safety matters.¹⁴⁸

Apart from the current, insufficient situation concerning training, certification, and recognition of competencies of fishermen, there is another reason why the Union should step in soon, namely the review of STCW-F that is currently underway. It urgently requires coordination of the Union's Member States' positions in order to avoid further insufficiencies and to secure a harmonized approach. This running IMO-project should not delay Union action for *fishing* as it did not in 1993/1994 for *shipping* while in 1995 a completely updated version of STCW-S was adopted...

The objectives of the necessary measures for improvement of safety at sea in fishing are (a) a standardized minimum level of training and certification based on internationally agreed rules and standards for all fishermen serving on board fishing vessels flying the flag of a Member State and (b) mutual recognition of the fishermen's certificates to enable free movement of fishermen and to promote standardized levels of training for safety at sea in fishing. As the current state of affairs shows, these objectives cannot sufficiently be achieved by the Member States, the figures of Annex I alone already speak for themselves, and can therefore be better achieved at Union level. In accordance with the principle of subsidiarity as set out in Article 5 of the TFEU, and in the opinion of the social

148. Often (sustainable) fisheries partnership agreements with third countries for access of EU fishing vessels to the fishing zones of these countries require local fishermen to be employed on board the vessels. These requirements create safety infringements if the local fishermen do not command a (working) language the rest of the crew speaks. A Union requirement to gradually establish a working language on board fishing vessels would force both the Union and the third countries to set up (working) language training programmes for local fishermen financed from moneys made available by the Union for development of the local fisheries sectors.

partners, the Union may now take the required measures. In accordance with the principle of proportionality, as set out in that Article, the measures cannot go beyond what is necessary in order to achieve the objectives.

As has been elaborated on in the present paper, the social partners have the statutory competence to take the legislative task upon them, but it is much more preferable that the European Commission does it – with the help of the social partners, of course. The sooner, the better.

Suggested structure of minimum Union legislation

On basis of the available international standards, guidelines and guidance, the structure of minimum Union legislation on training and certification of fishermen and recognition of their certificates could be:

All fishing vessels, regardless of size or propulsion power

- Basic safety training for all fishermen¹⁴⁹
- Implementation of Chapter III of STCW-F¹⁵⁰

Fishing vessels of less than 12 metres in length

- Introduction of standards of training and certification for skippers¹⁵¹ and radio operators¹⁵²
- Application of guidance for this category of fishing vessels provided in the *Document of Guidance on Training and Certification of Fishing Vessel Personnel, 2001*

Fishing vessels of 12 metres in length and over but less than 24 metres in length

- Introduction of standards of training and certification for skippers¹⁵³ and radio operators¹⁵⁴

149. Directive 93/103/EC, Article 9, and Directive (EU) 2017/159, Article 35, paragraph 3 (a).

150. STCW-F, Chapter III, does not contribute much to harmonized requirements. Therefore the FISH Platform has adopted a syllabus on basic safety training for all fishermen. The syllabus is available on FISH Platform's web site: www.fish-platform.eu.

151. Directive (EU) 2017/159, Article 10, paragraph 1.

152. Directive 93/103/EC, Article 10 (c), and Directive (EU) 2017/159, Article 28 (d).

153. Directive (EU) 2017/159, Article 10, paragraph 1.

154. Directive 93/103/EC, Article 10 (c), and Directive (EU) 2017/159, Article 28 (d).

- Application of guidance for this category of fishing vessels provided in the *Document of Guidance on Training and Certification of Fishing Vessel Personnel, 2001*

Fishing vessels of 24 metres in length and over but less than [60] metres in length

- Implementation of STCW-F, Chapters II and IV for skippers and non-engineer officers and radio operators

Fishing vessels of [60] metres in length and over

- Introduction of standards of training and certification for skippers and non-engineer officers and radio operators¹⁵⁵

Fishing vessels powered by main propulsion power machinery of less than 750 kW propulsion power

- Introduction of standards of training and certification for engineer officers
- Application of guidance for this category of fishing vessels provided in the *Document of Guidance on Training and Certification of Fishing Vessel Personnel, 2001*

Fishing vessels powered by main propulsion power machinery of 750 kW or more but less than 3.000 kW propulsion power

- Implementation of STCW-F, Chapter II for engineer officers
- Introduction of requirements for officers in charge of an engineering watch and watchkeeping provisions¹⁵⁶

Fishing vessels powered by main propulsion power machinery of 3.000 kW propulsion power or more

- Introduction of standards of training and certification for engineer officers
- Introduction of requirements for officers in charge of an engineering watch and watchkeeping provisions¹⁵⁷

155. STCW-F, Resolution 6, and Directive 93/103/EC, Article 10 (c).

156. STCW-F, Resolution 7.

157. STCW-F, Resolution 7.

Recognition of fishermen's certificates of competence¹⁵⁸

- Implementation of STCW-F, Chapter I, provisions on recognition
- Establishment of a Union agency having the task of ensuring that Member States comply with Union requirements on training and certification of fishermen¹⁵⁹

158. See: Directive 2005/45/EC.

159. The most appropriate existing agency is EMSA (European Maritime Safety Agency).

Conclusions

- Far too many fishermen sustain serious work-related injuries or death – even within the European Union of today. According to EMSA’s most recent annual overview of marine casualties and incidents, fishing was the most hazardous of the Union’s maritime sectors in the period 2011-2016.
- At best the safety situation in maritime fishing today does not differ from the safety situation in maritime transport late 1900s which led to quick and energetic legislative actions by the European Community in order to ensure observance of international standards on, *inter alia*, training and certification of seafarers.
- All Member States and the Union are party to the *Law of the Sea* (UNCLOS) which imposes on flag States the duty to ensure safety at sea through their internal legislation that shall be based on internationally agreed standards. While Member States take their duty seriously for the shipping sector (in part thanks to the legislative efforts made by the Union), they do not seem to take their duty very seriously for the fishing sector as the ratification rates of international conventions on safety at sea in fishing remain quite low (see Annex I).
- Although the Union implemented the so-called *1993 Torremolinos Protocol* into its *acquis* through Directive 97/70/EC and the *Work in Fishing Convention, 2007* through Directive (EU) 2017/159, it did not act as quickly and energetically with regard to safety training for the fishing sector as it did for the maritime transport sector.
- A standardized level of basic safety training for all fishermen and standardized levels of safety training for those fishermen who are responsible for navigation and vessel propulsion, serving on board any fishing vessel flying the flag of a Member State, are vital from the viewpoint of safety at sea in fishing. The European Union has confirmed this observation over and over again where maritime transport safety is concerned. It goes without saying that it also applies to fishing.
- Currently, Member States’ internal measures concerning the levels of training of fishermen, if regulated at all, are complicated and vary significantly between

Member States and, judging from the ratification/accession rates, do not seem to be based on the internationally agreed standards. Hence, there is no standardized level of training for fishermen within the Union. This situation is not conducive to improvement of safety at sea in fishing.

- Decision (EU) 2015/799 authorising Member States to become party or to accede to STCW-F has proven ineffective in light of the remaining, poorly low ratification/accession rates of its Member States.
- The current state of affairs calls for Union legislative measures.
- Directive (EU) 2017/159 forces Member States to adopt legislation on training and certification of fishermen before 15 November 2019; even for fishermen working on board of fishing vessels less than 24 metres in length.¹⁶⁰ In view of their flag State duties under international law, the legislation concerned shall be based on international standards adopted in this field.
- The STCW-F Convention is not a convention on standards of vocational training. It does not train for fishing skills. It is a convention on standards of training for basic safety competences, safe navigation, and safe propulsion of fishing vessels. It is therefore a convention aiming at improvement of the working environment to protect safety and health of fishermen.
- The STCW-F Convention therefore falls within the scope of Article 153, paragraph 1 (a), of the TFEU, thus giving the social partners the statutory competence to enter into an agreement aiming at the Convention's incorporation in the Union's *acquis*.
- Although the social partners are prepared to take legislative action, they would prefer *swift* legislative action proposed by the European Commission. They are ready to assist the Commission with their sectoral and legal expertise.
- The European Commission should (therefore), as part of its work programme for 2019, include a proposal for a Directive transposing STCW-F into the *acquis communautaire* in order to complete the implementation in the Union's legislation of the internationally agreed standards for ensuring safety at sea in fishing.
- However, taking Directive (EU) 2017/159 into consideration, the desirable Union legislation should go further than what STCW-F regulates by also intro-

160. Directive (EU) 2017/159, Annex, Article 3, however, offers Member States, for a *limited* period of time (maximum 5 years), some flexibility for *limited* categories of fishermen or fishing vessels.

ducing standards for small fishing vessels (less than 24 metres in length), that form the larger part of the Union's fishing fleet, and large ones (*e.g.* 60 metres in length or over) and for less than 750 kilowatts propulsion power and for 3000 kilowatts propulsion power or more.

- Directive 2005/36/EC rather hinders than promotes free movement of fishermen within the European Union and does not establish a standardized level of training and certification for all fishermen serving aboard fishing vessels flying the flag of a Member State while such a standardized level is vital from the viewpoint of safety at sea.
- Regulating recognition of seafarers' and fishermen's certificates of competence has become an exclusive competence of the European Union through Directive 2005/36/EC. For seafarers, the Union has introduced specific, different rules for recognition of seafarers' certificates of competence based on the system of recognition provided for in the STCW-S Convention. So far, the Union has *not* introduced specific, different rules for recognition of fishermen's certificates of competence based on the system of recognition provided for in the STCW-F Convention. This not only hinders free movement of fishermen, it also hinders the establishment of standardized levels of safety training for all fishermen serving on board fishing vessels flying the flag of a Member State, thus forming a threat to safety at sea in fishing.
- In its work programme for 2019, the European Commission should propose specific measures for recognition of fishermen's certificates of competence in line with the provisions concerned of STCW-F. Not only for citizens of the European Economic Area; also for citizens of third countries having ratified or acceded to STCW-F.
- Although Union legislative action has become unavoidable, Member States still need to accede to or ratify the three pillar conventions setting standards for safety at sea in fishing because it will help the Torremolinos Convention coming into force, which will be an incentive, of a somewhat compelling nature (*i.e.* port State control), for third countries to follow the good example of the Union's Member States.

Credits

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Annex I

Ratifications/accessions by EU Member States

EU MEMBER STATE		UNCLOS	A		B		C	
			S	F	S	F	S	F
			SOLAS	SFV	STCW	STCW-F	MLC	CI88
Austria	landlocked State	✓	✓	✗	✓	✗	✗	✗
Belgium	coastal State	✓	✓	✓	✓	✓	✓	✗
Bulgaria	coastal State	✓	✓	✓	✓	✗	✓	✗
Croatia	coastal State	✓	✓	✓	✓	✗	✓	✗
Cyprus	coastal State	✓	✓	✗	✓	✗	✓	✗
Czech Republic	landlocked State	✓	✓	✗	✓	✗	✗	✗
Denmark	coastal State	✓	✓	✓	✓	✓	✓	✗
Estonia	coastal State	✓	✓	✗	✓	✗	✓	✓
Finland	coastal State	✓	✓	✗	✓	✗	✓	✗
France	coastal State	✓	✓	✓	✓	✗	✓	✓
Germany	coastal State	✓	✓	✓	✓	✗	✓	✗
Greece	coastal State	✓	✓	✗	✓	✗	✓	✗
Hungary	landlocked State	✓	✓	✗	✓	✗	✓	✗
Ireland	coastal State	✓	✓	✓	✓	✗	✓	✗
Italy	coastal State	✓	✓	✓	✓	✗	✓	✗
Latvia	coastal State	✓	✓	✗	✓	✓	✓	✗
Lithuania	coastal State	✓	✓	✓	✓	✓	✓	✓
Luxembourg	landlocked State	✓	✓	✗	✓	✗	✓	✗
Malta	coastal State	✓	✓	✗	✓	✗	✓	✗
Netherlands	coastal State	✓	✓	✓	✓	✗	✓	✗
Poland	coastal State	✓	✓	✗	✓	✓	✓	✗
Portugal	coastal State	✓	✓	✗	✓	✓	✓	✗
Romania	coastal State	✓	✓	✗	✓	✓	✓	✗
Slovakia	landlocked State	✓	✓	✗	✓	✗	✓	✗
Slovenia	coastal State	✓	✓	✗	✓	✗	✓	✗
Spain	coastal State	✓	✓	✓	✓	✓	✓	✗
Sweden	coastal State	✓	✓	✓	✓	✗	✓	✗
United Kingdom	coastal State	✓	✓	✗	✓	✗	✓	✗
		28	28	12	28	8	26	3
European Union		✓	I	I	I	NI	I	I

A = Construction, equipment and seaworthiness; B = Training and certification;

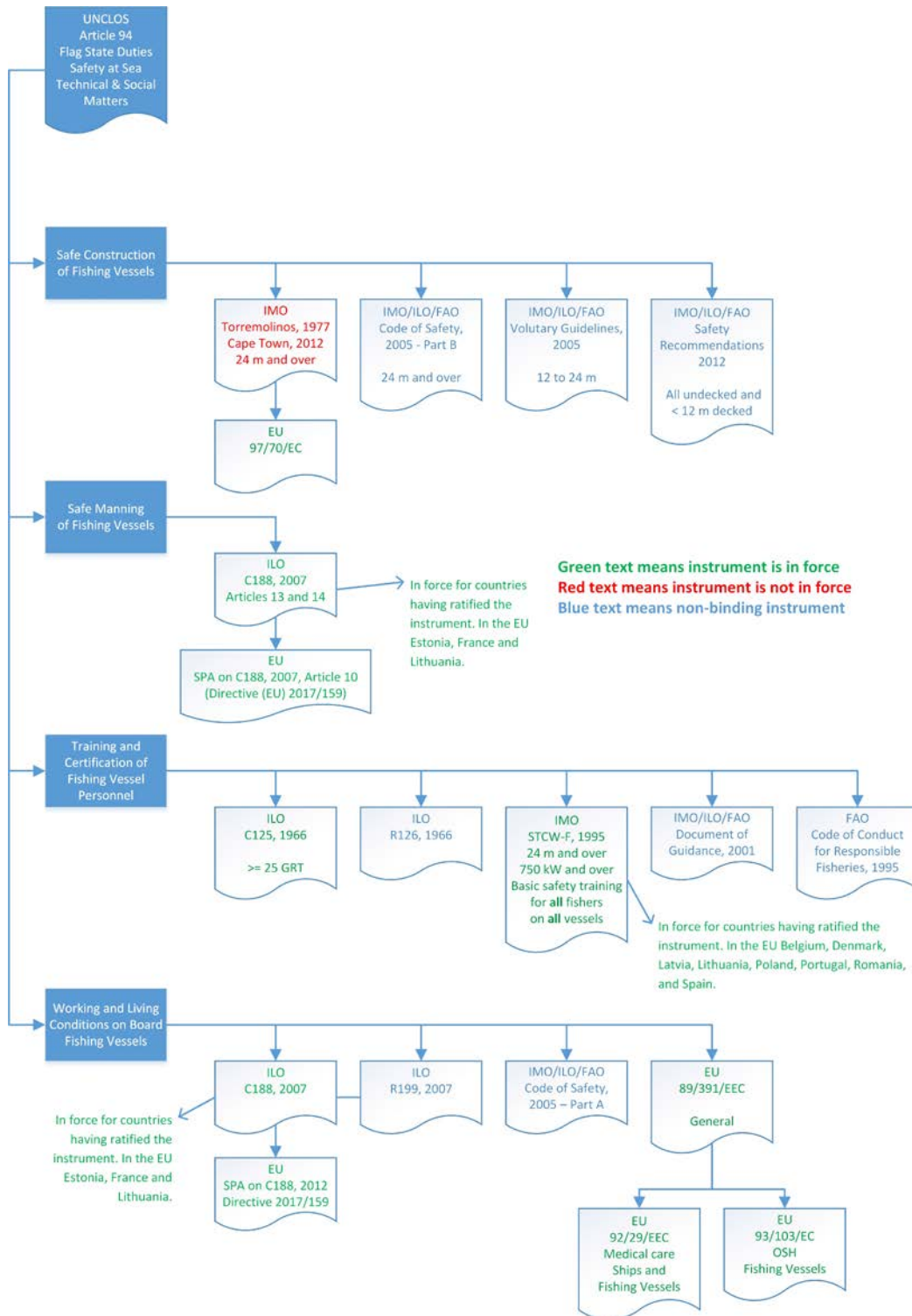
C = Manning and labour conditions; S = Shipping; F = Fishing;

✓ = Ratified/acceded to; ✗ = Not ratified/not acceded to;

I = Implemented; NI = Not implemented.

Annex II

International legal framework for safety at sea in fishing



Annex III

List of topics in STCW-F's syllabuses

Chapter II

Certification of skippers, officers, engineer officers and radio operators

Appendix to regulation 1

Minimum knowledge required for certification of skippers on fishing vessels of 24 metres in length and over operating in unlimited waters:

- Navigation and position determination
- Watchkeeping
- Radar navigation
- Magnetic and gyro-compasses
- Meteorology and oceanography
- Fishing vessel manoeuvring and handling
- Fishing vessel construction and stability
- Catch handling and stowage
- Fishing vessel power plants
- Fire prevention and fire-fighting appliances
- Emergency procedures
- Medical care
- Maritime law
- English language
- Communications
- Life-saving
- Search and rescue
- The FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels

Appendix to regulation 2

Minimum knowledge required for certification of officers in charge of a navigational watch on fishing vessels of 24 metres in length and over operating in unlimited waters:

- Celestial navigation
- Terrestrial and coastal navigation
- Radar navigation

- Watchkeeping
- Electronic systems of position-fixing and navigation
- Meteorology
- Magnetic and gyro-compass
- Communications
- Fire prevention and fire-fighting appliances
- Life-saving
- Emergency procedures and safe working practices for fishing vessel personnel
- Fishing vessel manoeuvring and handling
- Fishing vessel construction
- Vessel stability
- Catch handling and stowage
- English language
- Medical aid
- Search and rescue
- Prevention of pollution of the marine environment

Appendix to regulation 3

Minimum knowledge required for certification of skippers on fishing vessels of 24 metres in length and over operating in limited waters:

- Navigation and position determination
- Watchkeeping
- Radar navigation
- Compasses
- Meteorology and oceanography
- Fishing vessel manoeuvring and handling
- Fishing vessel construction and stability
- Catch handling and stowage
- Fishing vessel power plants
- Fire prevention and fire-fighting appliances
- Emergency procedures
- Medical care
- Maritime law
- Life-saving
- Search and rescue
- The FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels, Part A

Appendix to regulation 4

Minimum knowledge required for certification of officers in charge of a navigational watch on fishing vessels of 24 metres in length and over operating in limited waters:

- Terrestrial and coastal navigation
- Radar navigation
- Watchkeeping
- Electronic systems of position-fixing and navigation
- Meteorology
- Compasses
- Fire fighting
- Life-saving
- Emergency procedures and safe working practices for fishing vessel personnel
- Fishing vessel manoeuvring and handling
- Vessel stability
- Catch handling
- Fishing vessel construction
- Medical aid
- Search and rescue
- Prevention of pollution of the marine environment

Appendix to regulation 5

Minimum knowledge required for certification of chief engineer officers and second engineer officers of fishing vessels powered by main propulsion machinery of 750 kW propulsion power or more:

- See the STCW-F Convention

Appendix to regulation 6

Minimum additional knowledge and training requirements for GMDSS radio personnel:

- See the STCW-F Convention

Chapter III

Basic safety training for all fishing vessel personnel

Regulation 1

Basic safety training for all fishing vessel personnel:

- Personal survival techniques, including donning of lifejackets and, as appropriate, immersion suits
- Fire prevention and fire fighting
- Emergency procedures
- Elementary first aid
- Prevention of marine pollution
- Prevention of shipboard accidents

Chapter IV

Watchkeeping

- See the STCW-F Convention

Annex IV

The Commission's social commitment

“Ladies and gentlemen,

“[...]. We all know only too well that fishing is not only a hard job, but it is also amongst the most dangerous professional occupations, where accidents can happen easily. We do have a collective responsibility – as States, as Institutions, and as ship-owners – to do the utmost in ensuring decent working conditions, vessel safety and safety for persons working on fishing vessels, wherever that may be. Fishers also need to be well trained, certified and fit for the job. For all this, the international community has managed to agree on joint standards [...]. So the international rules, instruments and standards are there. However, and in sharp contrast to what we see in shipping, they are not sufficiently ratified. As we speak only 10 states have ratified C188, 20 states have ratified the STCW-F, and the Cape Town Agreement is still awaiting a sufficient number of ratifications to enter into force. Therefore, these rules, instruments and standards are far from being widely and harmoniously implemented on the vessels. As a consequence, the levels of protection vary considerably between fishermen/women of different countries and between fishermen/women and [...] seafarers. This can hardly be justified. The low level of protection of fishers is all the more surprising as the global number of fishers is actually 10 to 20 times higher than the number of seafarers. [...] The European Union is taking these social challenges very seriously: the promotion of more safety at sea and better labour conditions for fishers is part of our policy priority on better ocean governance within and outside the EU and it is in line with the EU's commitments under the 2030 Sustainable Development Agenda (SDG 8 and 14 notably). [...] So what do we do within the EU? Within the EU we have a strong legal and political mandate for managing marine biological resources with the objectives of achieving not only environmental and economic but also social benefits and a fair standard of living. This is part of the Treaty on the functioning of the EU and the EU's Common Fisheries Policy. Both our fisheries conservation and structural policy contribute to the social dimension, including to the social sustainability of the seafood supply chain. When it comes to labour and safety standards in fisheries things are a bit complicated in the EU since we are here in the area of what we call ‘mixed competence’. This means that on the one

hand the main part of the Conventions has to be transposed into EU law. On the other hand the international Conventions need to be ratified by EU Member States since the Member States are signatories to ILO and IMO. Here the EU and its Member States have still some homework to do. Therefore, we have been raising awareness of Member States on the need to ratify international conventions related to safety and working condition and promote ratification internationally. In this respect we have also worked closely with the European social partners and relevant stakeholders in the fishing sector. Our Commissioner for Maritime Affairs and Fisheries, Mr Vella, is personally engaged to bring ratifications forward still under his term and he has written to our Member States to this end. I do hope that in our forthcoming report on the ratification of the STCW-F by EU Member States we will be able to show progress in ratifications. Because, the more States have ratified the conventions and actually enforce them, instead of just a few, the better the protection of fish workers will be at a global level, and thus the level of playing field for our operators. [...].”¹⁶¹

161. Quotes from the key note speech of Veronika Veits, director, European Commission, Directorate-General for Maritime Affairs and Fisheries, Fisheries Policy Mediterranean and Black Sea, delivered in Rome on 11 July 2018 at the side event “on ensuring socially, environmentally and commercially sustainable fisheries” of the 33rd session of the FAO Committee on Fisheries (COFI).
