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EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate H - Western European Partners
The Director

Brussels
SG.H.2/MS

Dear Mr Bodson,

Thank you for informing my services about the contacts between Belgium and UK authorities on the draft Memorandum of Understanding covering a minimum wage corridor for seafarers and general provisions on bilateral collaboration on seafarer's welfare. You have also provided us with a UK legal analysis of compliance of the recent UK Seafarers' Wages Bill with the UK's international obligations.

I understand that you intend *not* to conclude this MoU with the UK and hence, technically, your information does not fall within Article 9 of the Council Decision (EU) 2021/689.

Despite this, and because of the general nature of the issue, I would like to share with you our legal assessment of the concept of "wage corridors" on sea.

In our view, the establishment of the minimum wage corridor between Belgium and the UK might not be in line with Article 94(1), (2), (3) and (5) of the United Nations Convention on the Law of the Sea (UNCLOS). In accordance with this provision

"[…] (1) Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

(2) In particular every State shall: […] (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

(3) Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: […] (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments. […]

[…] (5) In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and

Benjamin Bodson
Relations with the United Kingdom and with the EFTA States
Permanent Representation of Belgium to the European Union
Belliardstraat 65 Rue Belliard, B-1040 Brussel/Bruxelles
benjamin.bodson@diplobel.fed.be

to take any steps which may be necessary to secure their observance.[…]"

Based on this provision, the regulation of labour conditions on ships therefore falls under the purview of flag States.

We also note that Article 21(1) and (2) UNCLOS specifies that

"[…] (1) The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following: (a) the safety of navigation and the regulation of maritime traffic. […]

(2) Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards. […]"

This provision therefore specifically recognises the right of the coastal State to adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of the safety of navigation, including labour conditions. However, such laws and regulations can apply to the manning of foreign ships only in so far as they are giving effect to '*generally accepted international rules or standards'*.

Notably based on the Convention on Maritime Labour, international rules and standards exist in relation to the right of seafarers to be paid and to enjoy fair and decent working conditions. However, such rules and standards do not encompass, at this stage, precise minimum wages.

While the Maritime Labour Convention contains a provision that *"[…] All seafarers shall be paid for their work regularly and in full in accordance […]"* (Regulation 2.2), including in case of sickness or injury under certain conditions (Regulation 4.2) ([1]), it distinguishes between 'mandatory Standards' and 'non-mandatory Guidelines', "contain[ing] the details for the implementation of the Regulations".[2] In this context, minimum wages are not covered by binding provisions nor standards, but only by guidelines (see Guideline B2.2 – calculation and payment), which are not mandatory and not binding.[3]

In conclusion, the establishment of the minimum wage corridors might not be in line with the rights of the flag States as set out in Article 94 UNCLOS.

([1]) See Regulation 4.2 of ILO Maritime Labour Convention: *"[…] Each Member shall ensure that measures, in accordance with the Code, are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement. […]"*.

([2]) See ILO Maritime Labour Convention 2006, Explanatory note to the Regulations and Code of the Maritime Labour Convention, para. 4: *"[…] The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines). The Code can be amended through the simplified procedure set out in Article XV of the Convention. […]"*.

([3]) These guidelines are referred to in the binding section of the Convention, which notably provides that *"Member that adopts national laws or regulations governing seafarers' wages shall give due consideration to the guidance provided in Part B of the Code*" (Standard A.2.2, para. 6).

For this reason, we support your intention to refrain from conclusion of this Memorandum of Understanding.

Yours sincerely,

Richard SZOSTAK

Electronically signed on 13/12/2022 09:45 (UTC+01) in accordance with Article 11 of Commission Decision (EU) 2021/2121