

HELLENIC REPUBLIC

Piraeus, September 10, 2013

Protocol no: 3527.1.2/01/2013

In application of MLC, 2006/ 01

MINISTRY OF MARITIME AFFAIRS AND
THE AEGEAN

DIRECTORATE OF MARITIME LABOUR

DIRECTORATE FOR SEAFARERS' EDUCATION -

DIRECTORATE OF REGULATION AND OVERSIGHT OF ORGANISATIONS -

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Subject: "Implementation of the requirements of the Maritime Labour Convention, 2006 adopted by the International Labour Organisation"

A. GENERAL / HISTORICAL OVERVIEW

1. On February 23rd 2006 the General Assembly of the International Labour Organisation (ILO), during its 94th maritime session in Geneva, Switzerland adopted the Maritime Labour Convention, 2006 (MLC) a unified and cohesive instrument, which is also innovative and incorporates standards contained in 65 existing international maritime labour instruments (Conventions and Recommendations) adopted by the ILO since 1920, as well as fundamental principles included in other international labour Conventions. Within this framework, the MLC, 2006 essentially constitutes the first international Maritime Labour Code, and constitutes the "fourth pillar" of international maritime law, complementing the other three pillars that are the key Conventions of the International Maritime Organization (IMO): the *International Convention for the Safety of Life at Sea, 1974*, (SOLAS), the *International Convention on Standards of Training, Certification and Watchkeeping, 1978*, (STCW) and the *International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978* (MARPOL).

2. This Convention constitutes an instrument of Port State Control of ships in Ports under the terms of the "*no more favorable treatment*" clause, i.e. the implementation of the requirements thereof shall be inspected on ships regardless of whether the ships are flying the flag of a Country that has ratified the Convention or not and sets out certification (the Maritime Labour Certificate – Declaration of Maritime Labour Compliance) for ships of 500 GT or above that are engaged in international voyages,

as well as ships of a similar tonnage, which are engaged in voyages from a port or between ports of a country other than that of the flag they fly.

3. Alongside the adoption of the MLC, 2006, the ILO also adopted a series of Resolutions, amongst which those that, in 2008, led to the development of Guidelines in order to achieve effective, even-handed and unified inspection of the implementation of MLC, 2006, by the inspectors of the Port State and the Flag State.

4. The European Commission, considering it would be expedient to develop the existing community standard by adapting, unifying or completing it, having regard to the MLC, 2006, carried out consultations with its social partners in the maritime transport sector, the organisations of which, on May 19, 2008, concluded an agreement on the MLC, 2006, containing a call to implement the Convention alongside the Agreement in question. Considering that the social partners perform a particularly significant role and taking into consideration fundamental social rights set out in the European Charter of Fundamental Rights, the Commission adopted Directive 2009/13/EC on the 16th February 2009 implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and European Transport Workers' Federation, (ETF) concerning the MLC, 2006, and amending directive 1999/63/EC.

B. STRUCTURE AND CONTENT

1. The convention is organised in three different but linked parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the broad rights and principles, as well as the fundamental obligations of the States that ratify the Convention. The Code includes details on the implementation of the Regulations. It has two Parts: Part A (Standards) the provisions which are mandatory and Part B (Guidelines), which are not mandatory to implement, which must be taken into consideration in the implementation of the mandatory requirements, allowing a significant degree of flexibility in the manner in which the States that have ratified the Convention implement the obligations, rights and principles in question. Specifically, standards are adopted which govern all maritime labour in general and concern the minimum requirements regulating issues of work conditions and terms, with special care for youth, accommodation, recreation and catering, welfare and social security, medical care and health care.

2. The Regulations and Code of the Convention are organised into five Titles, as follows:

Title 1 – Minimum requirements for seafarers to work on a ship.

Title 2 – Conditions of employment.

Title 3 - Accommodation, recreational facilities, food and catering.

Title 4 – Health protection, medical care, welfare and social security protection.

Title 5 – Compliance and Enforcement.

C. TIME OF ENTERING INTO FORCE - IMPLEMENTATION

1. In accordance with Article VIII of the Convention, in order for the MLC, 2006 to enter into force, one year must go by following the date upon which it has been ratified by a minimum of 30 ILO Member States that hold an overall stake greater than 33% of the worldwide gross tonnage and those ratifications have been registered to the Director General, i.e. one year past August 20th 2012. Following that date, the

Convention goes into effect for every Member 12 months after the date its ratification was registered.

2. Taking into consideration paragraph 7 of Article V of the Convention, according to which every Member fulfils its obligations under this Convention in such a way as would ensure that ships that fly the flag of any State, which has not ratified the Convention will not have a more favourable treatment than ships that fly the flag of any State that has ratified the Convention, it is made known that from August 20th 2013 forward, any ship flying a Greek flag, which sails into ports of States that have ratified the Convention and in which the Convention has gone into effect (Annexe I) may constitute the object of an inspection in accordance with the requirements of the Convention. It is of course noted that implementation of Part B of the Code cannot be verified / inspected by authorised Port State officers, but can only be inspected by the monitoring instruments of the ILO. Up-to-date information concerning the States that have ratified the Convention and the time at which this comes into force for each State can be found at a special page on the official ILO website.

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO::P11300_INSTRUMENT_ID:312331

The Maritime Labour Certificate and the Declaration of Maritime Labour Compliance in accordance with the Convention constitute *prima facie* proof of compliance to the requirements of the Convention (including the rights of seafarers), except in such instances as the inspector / authorised officer ascertains that:

- a.** the required documentation is not shown or is not maintained or is falsely maintained or that the required documentation presented does not contain the information required by the present Convention or are in any other way null and void, or
- b.** there are clear indications believe that the working and living conditions on board ship are not in compliance with the requirements of the Convention, or
- c.** there are well-founded reasons to believe that the ship has changed flags in order to avoid being in compliance with the Convention, or
- d.** there are complaints which set out that the specific conditions for work and living on board ship are not in compliance with the requirements of the Convention.

3. Furthermore, it should be noted that in accordance to Decision no. XVII adopted by the General Assembly of the ILO as regards the practical implementation of the issue of certificates in accordance with the position in effect of the Convention, Members are required (both Flag States and Port States) to examine appropriately the capability for a grace period of one year following the initial going into effect of the Convention, i.e. up to August 20th 2014, to permit ships to operate without the relevant certificate and declaration, under the condition that their inspectors do not have proof that the ships do not comply to the requirements of the Convention.

4. Greece ratified the Convention with l. 4078/2012 (A' 179), in accordance to which the above go into effect for our country on January 4th 2014. Within this context and maintaining what was set out in paragraph C2 of the present document, the following were published as warranted by the aforementioned law:

- a. joint ministerial decision (jmd) no. 3522.2/08/2013 (B'1671) and
- b. jmd no. 4113.305/08/2013 (B'1553),

which approve Regulations to implement the requirements of the Convention, including the obligations of the Flag State and the Port State, which go into effect in accordance with the provisions of article two of each thereof. It should be noted that in accordance to jmd no. 3522.2/08/2013 there is no limitation on the potential to implement its provisions from the date of its publication on ships carrying out international voyages or travelling between foreign harbours.

5. In an instance wherein a ship flying the Greek flag is detained in port because it does not carry a Certificate of Maritime Labour and a Declaration of Maritime Labour Compliance we recommend that the Directorate of Maritime Labour should be informed of this event, in communication with the authorities of the Port State.

D. OBJECTS OF NATIONAL REQUIREMENTS

1. Field of implementation

The provisions of the Regulation for the implementation of the requirements of the ILO MLC, 2006 which was approved by jmd no 3522.2/08/2013 (henceforward National Regulation) have effect, in accordance with article 1 thereof, on seafarers who are employed on ships, in the meaning of this Regulation, other than ships employed in fishing or similar pursuits, such as those auxiliary to fish farms or fish that are deemed to be of traditional build in accordance with jmd. 4113.203/01/13-09-2005 (B'1281) and warships or naval auxiliaries. The term “seafarer” means any person who is employed or engaged or works in any capacity on board a ship to which this National Regulation applies. Persons who board and work on a ship or are employed on its account, such as private armed guards, pilots, port workers, inspectors, maintenance workers / members of work crews etc. are not considered to be seafarers for the purpose of implementing the requirements of the Convention.

2. Medical certificates

Prior to beginning work on board a ship, seafarers must hold a valid medical certificate attesting that they are medically fit to perform their duties at sea. It should be noted that a medical certificate issued with regard to the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (“STCW”) shall be accepted. Moreover, a medical certificate issued in accordance with the legislation of countries that have ratified the MLC, 2006 shall be accepted for the purposes of the National Regulation. Medical certificates of seafarers issued in accordance with I.C. no. 73 of the International Labour Organisation or in accordance to the STCW I.C. (as amended in 1995) are in effect and shall be accepted up to the date they cease to be in effect and not beyond January 1st 2017. Existing Greek certificates shall be accepted as above, given that they were issued in accordance with I.C. no. 73 and STCW I.C. (as amended in 1995).

3. Recruitment and placement services

The instance where seafarers are employed directly by the shipowner, i.e. without any intermediate recruitment and placement services, does not fall under this regulation / standard of the Convention and article 5 of the National Regulation and should be declared respectively by the shipowner in Part II of the Declaration of Maritime Labour Compliance. The instance of seafarers being hired by a personnel department maintained by the shipowner is considered to be such. In the instance where a shipowner utilises a private placement service, measures should be taken to ensure that this service is licensed or certified or conforms to the requirements of Regulation 1.4 of the Convention. This obligation, which is subject to inspection and certification, is particularly important and when use is made of recruitment services operating in countries that have not ratified the Convention, the shipowner should take measures, to the extent possible, and provide information in accordance to article 5 of the National Regulation.

4. Seafarers' employment agreements

The seafarer's employment agreement shall be signed by both the seafarer and the shipowner or a representative of the shipowner or by the captain (when he is not himself the seafarer in question) and shall be concluded when it is recorded in the ship's crew list. Except in instances of the shipowner or the captain, who acts on his behalf in accordance with national legislation, any other party who contracts with the seafarer must be in a position to supply written documentation that proves that he represents the shipowner. A seafarer's employment agreement is considered to incorporate any terms of a collective bargaining agreement for seafarers' employment which are in effect and mention must be made of those fields in the clauses of the seafarer's employment agreement, as well as mention of the collective bargaining agreement to which reference is made. If there is no collective bargaining agreement in effect, the terms and conditions of the seafarer's employment agreement shall be agreed upon by the contracting parties and shall be recorded in the written seafarer's employment agreement. Within this framework, it may be jointly accepted between the contracting parties to make explicit reference, in part or in whole, to terms of a previous Collective Bargaining Agreement for Seafarers' Employment, which was previously in effect and which is no longer in force and there shall be a relevant mention in the appropriate fields that are included in the seafarer's employment agreement, without this statement meaning that the Collective Agreement which is no longer in force is brought generally into force, as the aforementioned is only binding to the contracting parties. Each of the contracting parties shall receive an original of this agreement. It is recommended that there be a copy of the seafarers' employment agreement or an original thereof on board ship. Once the seafarer's employment is terminated, the seafarer receives an "employment record document", which contains information concerning his employment on board that conforms to article 6 of the National Regulation.

5. Accommodation, recreational facilities

The provisions of Chapter C of the National Regulation, with regard to construction and equipment, in implementation of Regulation 3.1, par. 2 of the Convention shall apply to all ships constructed on or after the 4th January 2014. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar

stage of construction. For existing ships for which these provisions of Chapter C do not have effect, the following shall be in effect:

a. for ships on international voyages that are of gross tonnage over 500GT constructed after 18-7-1986, the provisions of l. 1637/1986 “Ratification of International Labour Convention no. 92 on the accommodation of ship crews (revised 1949) (A' 107)” as in effect.

b. for ships on international voyages that are of gross tonnage over 1000GT constructed after 19-5-1986, the provisions of l. 1637/1986 “Ratification of International Labour Convention no. 133 on the accommodation of ship crews (revised 1949) (A' 65)” as in effect.

c. for ships on international voyages that are of a gross tonnage over 100GT and less than 500GT, the provisions of P.D. 259/1981 “On the Regulation for the accommodation of the Captain and crew of Greek commercial ships” (A' 72), as in effect.

d. for ships on international voyages that are of gross tonnage over 500GT for issues that are not regulated explicitly or are not implemented in accordance with International Treaties 92 and 133, the provisions of P.D. 259/1981, as in effect.

e. for the remaining ships on domestic routes, the provisions of P.D. 259/1981, as in effect and P.D. 221/2001 “Regulation of accommodation for passengers and crew of High Speed Craft” as in effect (A 171).

The requirements of national legislation that concern construction issues about the accommodation on existing ships, in accordance with the above, are satisfied by the existence in effect of a Passenger Ship International Safety Certificate or an International Certificate of Cargo Ship Safety or an International Certificate of Safe Construction for Cargo Ships or a General Inspection Protocol in each instance.

6. Ship’s Cooks

Seafarers who are employed on board ship as cooks shall have the appropriate proof, which is issued by the Ministry of Maritime Affairs and the Aegean’s Directorate for Seafarers’ Training (Chief Cook Degree; class A, B, or C Cook’s License). Certificates which are issued by countries that have ratified the Convention or the Certification of Ships’ Cooks Convention, 1946 (No. 69), shall be similarly acceptable. The seafarers in question cannot be younger than 18 years of age.

7. Complaint Management Procedures on board ship

In accordance with article 33 of the National Regulation for complaint management on board ship, the shipowner or captain shall provide all seafarers with a copy of the complaint management procedures which are in effect on board ship, which shall include contact information for the Directorate of Seafarer Employment of the Ministry of Maritime Affairs and the Aegean, as set out in Annexe 11 and where the country of residence is other than Greece, contact information for the competent authority of that country.

E. SHIP CERTIFICATION – DECLARATION OF MARITIME LABOUR COMPLIANCE

1. Ships that come under the field of implementation of article 31 of this National Regulation, i.e.:

- a. those of a gross tonnage of 500 or over, which carry out voyages from a country to a port outside that country;
 - b. those of a gross tonnage for 500 or over, active from a port or between ports outside Greece;
 - c. any ship following the request of the shipowner;
- shall bear and maintain a Certificate of Maritime Labour that conforms to article 32 of the aforementioned Regulation, which certifies that labour and living conditions for seafarers on board ship, including measures for ongoing compliance included in the Declaration of Maritime Labour Compliance (DMLC) have been inspected and comply to national legislation or other measures that implement the Convention.

2. The Declaration of Maritime Labour Compliance is attached to the Certificate and it shall have two Parts:

a. Part I, which is shown in Appendix III and shall provide, *inter alies*, a reference to the relevant national legal provisions as well as concise information on the main content of the national requirements. In accordance with what is set out in the manual for Frequently Asked Questions (Revised Edition 2012) issued by the International Labour Organisation, if a recognised organisation has been suitably authorised by the competent authority of the Flag State to complete and issue the Certificate of Maritime Labour, then it can also be authorised to issue Part I of the DMLC, which is attached to the Certificate. In related matters, it should be noted that, in accordance with what is set out in Regulation 3 of jmd no. 4113.305/01/2013, the recognised organisations are “fully (F)” recognised as regards the issuing of the Declaration of Maritime Labour Compliance, i.e. including Part I and as such are able, besides the competent Authority of Regulation 1 which was similarly approved by the aforementioned joint ministerial decision, that being the Directorate for the Verification of Safety and Security Management of Ships and Port Facilities (DEDAPLE), shall sign Part I of the Declaration.

If an RO has been duly authorised by the flag State competent authority to clarify and issue the Maritime Labour Certificate, an RO could also be authorized to Issue the OMI (Part I to be attached to the Certificate (C5.1.m. Maritime Labour Convention, 2006 (MLC. 2006) Frequently Asked Questions (FAQ) Online revised Edition 2012)

b. Part II shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement. Specifically, they may set out the instances in which ongoing compliance with specific national requirements shall be certified, individuals who are responsible for the certification, files that must be maintained, as well as procedures that shall be followed when non-compliance is noted. References to other more comprehensive documentation, covering policies and procedures relating to other aspects of the maritime sector, such as documents required by the International Safety Management (ISM) Code or information required by the SOLAS Convention relating to the Ship’s Continuous Synopsis Record (CSR), shall be accepted for the purposes of Part II. An example of the kind of information that might be contained is set out in Appendix B5-I of the Convention. Part II is certified by DEDAPLE or by the suitably authorised classification society.

3. An authorised organisation may issue a Certificate if it judges that the results of the inspection it had carried out in past, e.g. within the framework of voluntary compliance by the shipowner, assure compliance to the relevant national requirements implementing the Convention. The relevant procedure must be set out in its quality assurance system.

4. Additionally, it should be noted that in accordance with article 32 par. 12 of the National Regulation, Part II of the Declaration may be written solely in the English language in instances where the ship does not carry out domestic voyages.

F. Port State Control of ships flying the National flag

In accordance with what is set out in the Instructions of the ILO for Port Inspectors who carry out inspections in accordance with the Convention, it would not be possible for every deficiency to result in preventing a ship from sailing. Chapter 5.2 of the ILO Guidelines for Port State control officers carrying out inspections under the Convention contains examples of instances which are included in the appropriate ILO Guidelines, which could potentially, due to the frequency with which they appear or their systematic re-appearance or due to the severity of an isolated incidence lead to the decision to detain in port (or cessation of operations thereon) in the instance of a lack of agreement on a plan of action to repair the deficiency.

G. Documents that shall be carried on board ship

Attention is drawn to the requirements of the Convention and the National Regulation concerning the forms / files which must be maintained on board ship.

The present document, as well as information about issues that concern the Convention and its implementation, is contained in a specially formulated page on the official website of the Command of the Hellenic Coast Guard (www.hcg.gr).

Shipowners' and Seafarers' Associations are requested to inform their members suitably and organisations that fall under their powers.

The Minister

Miltiadis Varvitsiotis

Attached:

The Appendices mentioned in the text.