Interprofessional agreement concluded on 14 February 2020 between FEDIL Shipping on the one hand and the OGB-L and the LCGB (unions benefiting from general representation at national level) on the other, transposing Directive (EU) 2018/131 into internal maritime law

PREAMBLE

Having regard to the Luxembourg Maritime Act of 9 November 1990 concerning the creation of a Luxembourg maritime register, as amended,

Having regard to Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014,

Having regard to Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the ECSA and the ETF on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC,

Having regard to the provisions of the Maritime Labour Convention 2006,

The social partners have agreed on the following text:

PURPOSE & SCOPE OF APPLICATION

Having regard to the fact that maritime law is a special branch of common law and consequently reference cannot be made thereto (with the application of the provisions of the Labour Code being thus excluded, unless expressly referred to). This agreement applies to seafarers on ships flying the Luxembourg flag, unless otherwise stated herein. Seafarers residing outside the European Union are subject to the law chosen by the parties at the time of recruitment.

PROVISION

Article 1: Adoption of the ECSA/ETF agreements of 19 May 2008 and 5 December 2016

The signatory parties of this agreement fully adopt the text of Council Directive 2018/131 and acknowledge that the rules contained therein are the minimum rules that will be observed on ships flying the Luxembourg flag.

As certain concepts do, nevertheless, need to be clarified, the parties agree and also specify that:

Article 2: Applicable law

Without prejudice to the stipulations listed in this collective agreement, the labour relations shall be governed by the Law of 9 November 1990 concerning the creation of a Luxembourg maritime register, as amended, and the International Labour Organization's Maritime Labour Convention, 2006, respectively. The working conditions of seafarers will automatically respond to the changes in legislation and regulations. The nature of the employment relationship excludes any application by default of Luxembourg Labour Code.

Article 3: Work on public holidays

Unless otherwise expressly stated in the contract of employment, the following days are considered to be official public holidays:

- New Year's Day
- Easter Monday
- 1 May
- Europe Day

- Ascension Day
- Whit Monday
- Luxembourg National Day
- Assumption Day
- All Saints' Day
- the first day of Christmas
- the second day of Christmas (St. Stephen's Day).

Any work on a public holiday shall be compensated as stated in the contract of employment or subordinate agreement.

Article 4: Organisation of working time

The minimum number of hours of rest must not be less than:
- 10 hours for every 24-hour period, and
- 77 hours for every 7-day period.

However, the parties to this agreement agree that in the interests of the seafarers and the efficient organisation of the company, the seafarers may work hours in excess of these daily limits.

Time worked in excess of 8 hours per day, i.e. overtime, is paid/compensated at the basic salary plus 25 %.

Article 5: Holidays

Holidays are governed by the legislation in force covering annual paid leave at the time of the signing of this agreement, unless legal amendments are introduced during the term of this agreement. The holiday allowance is three working days per month of employment.

Article 6: Repatriation

§ 1 - Right of repatriation

Seafarers on ships flying the Luxembourg flag have the right to be repatriated at the cost of the shipowner:
1. if the maritime employment contract expires on its normal termination date and the seafarer is in a country other than his country of residence;
2. in the event of redundancy other than dismissal for gross misconduct on the part of the seafarer;
3. at the end of the notice period;
4. if the seafarer is no longer able to carry out his duties as stated in the maritime employment contract or if it is no longer possible to require of him to exercise his duties as a result of specific circumstances, namely:
– illness, accident or any other medical reason necessitating disembarkation; shipwreck;
– a scenario whereby the shipowner is no longer able to meet its legal and contractual obligations as employer owing to collective proceedings, change in registration, the sale of the ship or any other similar reason;
– when the ship moves towards an area of armed conflict where the seafarer refuses to go;
– in the event of the termination or suspension of the marine employment contract in accordance with the collective agreement or in the case of the termination of the contract for any other similar reason.

§ 2. Terms of repatriation.

The shipowner is released from the repatriation obligation if the seafarer does not request repatriation within 30 days of disembarking.

The maximum length of the disembarkation period after which the seafarer is entitled to repatriation is nine months.

(1) The shipowner discharges itself of the obligation placed on it under the first section of this article by means of a financial guarantee, insurance policy or any other equivalent arrangement.
(2) The shipowner is forbidden from requiring the seafarer at the beginning of his employment to provide an advance to cover the costs of his repatriation and also from recovering from the seafarer the costs of repatriation from his salary or other rights, unless the seafarer was disembarked as a result of gross negligence or an injury or illness resulting from an intentional act or inexcusable error on the part of the seafarer.
(3) The costs chargeable to the shipowner in the case of repatriation must at least include:

1. the journey to the chosen destination for repatriation;
2. the accommodation and food for the seafarer from the time he leaves the ship until he arrives at the repatriation destination;
3. the remuneration and expenses of the seafarer from the time he leaves the ship until he arrives at the repatriation destination;
4. the transportation of 30 kilos of the seafarer's personal luggage to the repatriation destination;
5. medical treatment, if necessary, until the seafarer's health allows him to travel to his repatriation destination.

(4) The shipowner must continue to pay the repatriation costs until the seafarer arrives at the set destination or until he obtains a suitable job on board a ship travelling to one of these destinations.
(5) The shipowner is responsible for organising the repatriation using appropriate and timely methods. Air transportation should as far as possible be the normal method of transport.
(6) Unless otherwise chosen by the seafarer, he is entitled to be repatriated to a destination with which he is deemed to have actual ties, notably:
1. the place where he accepted employment;
2. his country of residence or any other place agreed between the parties at the time of recruitment.

The time spent awaiting repatriation and the length of the journey must not be deducted from the paid holidays which the seafarer has accrued.

There should be no obstacle to the right of the shipowner to recover the cost of the repatriation in respect of contractual arrangements with third parties.

Article 7: Training policy

The shipowners undertake to support and encourage specific national policies to encourage the development of the careers and professional abilities as well as the employment opportunities of seafarers so that the maritime sector is provided with a stable and competent workforce. The purpose of the policies stated in paragraph 1 hereof is to help seafarers to improve their skills, qualifications and employment opportunities.

Article 8: Harassment and violence

The company declares that it does not tolerate any form of sexual/moral harassment within the company, in particular sexual harassment as defined in Articles L.245-1 *et seq.* of the Labour Code.

Consequently, the employer shall ensure that it provides all employees with a workplace which respects the dignity of all parties and which is free of any sexual or moral harassment of any type whatsoever. Furthermore, the employer undertakes to take the necessary measures to prevent and resolve sexual and moral harassment which may occur under the best possible conditions and with the highest degree of confidentiality. The disciplinary sanctions to be applied in the event of harassment shall be determined by the company manager after consulting the staff delegation, if such delegation exists.

The company undertakes to apply the convention of 25 June 2009, which is of a generally obligatory nature and which forms an integral part of this agreement with respect to harassment and violence in the workplace as signed by the trade unions and employer organisations.

Article 9: Equality and the fight against discrimination

The company undertakes to ensure equality between men and women, notably equal pay in accordance with Articles L.241-1 to L.244-3 of the Labour Code, and to combat any type of discrimination based on race, religion, ethnic origin, etc.

Article 10: Performance and interpretation of the agreement

Difficulties resulting from the performance and interpretation of this agreement shall be settled between the Management and the staff representative(s), where applicable, with the assistance of the signatory trade unions and Fedil.

Collective conflicts, that is difficulties within the meaning of the previous paragraph for which it is not possible to reach an agreement, shall be submitted to the Luxembourg national conciliation service ("Office National de Conciliation") in accordance with the provisions of the Labour Code.

The contracting parties have agreed to govern the entire contractual relationship of the employee with the company by written agreement and to accordingly provide for all foreseeable situations in the text of the collective agreement. It is therefore possible to amend the text of this agreement by mutual agreement at any time.

Article 11: Term of this agreement

This collective agreement is agreed for an initial period of one year.
This collective agreement can be terminated with 3 months' notice prior to the expiry date.

It shall be renewed by tacit agreement each year unless one of the parties terminates it by registered post with advance notice of three months before the expiry date.

Talks shall commence no later than 6 weeks before the expiry of the agreement concerning its renewal.

In the case of termination, the agreement shall remain in force until a new agreement is signed between the contracting parties within a maximum of 12 months.

The parties concerned may decide by mutual agreement to renegotiate the agreement or some of its provisions.

In order to reflect changes in legislation, this text shall be reviewed and possibly corrected at times other than at its renewal whenever such review becomes necessary in order to prevent the present agreement from becoming obsolete during its application and to adapt it to existing legislation.

Article 12: Financial security

The financial security provision laid down in Council Directive (EU) 2018/131 takes the form of insurance taken out with one or more service providers.

Article 13: Declaration of general obligation

The social partners have also agreed that the declaration of general obligation of this collective agreement will be requested by the signatory parties from the date of entry into force determined by the social partners, by mutual agreement, on 1 January 2020.

Drawn up in quadruplicate in Luxembourg on 14 February 2020.

For FEDIL Shipping:

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05/03/2020