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INTERNATIONAL LABOUR ORGANIZATION

**International Labour Standards Department
Sectoral Activities Department**

**Summary of observations and suggestions on the
two sets of joint proposals for amendments to the
Code of the Maritime Labour Convention, 2006**

**Information document for the first meeting of the
Special Tripartite Committee established under
Article XIII of the MLC, 2006**
(Geneva, 7–11 April 2014)

Geneva, 2014

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Contents

| | <i>Page</i> |
|--|-------------|
| Two sets of joint proposals to amend the Code of the MLC, 2006: Summary of observations and suggestions made by ILO Members | 1 |
| Introduction | 1 |
| Observations and suggestions on the two sets of joint proposals for amendments to the Code of the MLC, 2006..... | 2 |
| General observations and suggestions | 2 |
| A. Observations and suggestions on the first set of joint proposals (Regulation 2.5)..... | 4 |
| A1. Observations and suggestions on proposed Standard A2.5.2 – Financial security..... | 4 |
| A2. Observations and suggestions on proposed Guideline B2.5.3 – Financial security..... | 7 |
| A3. Observations and suggestions on proposed Appendix A2-I..... | 8 |
| B. Observations and suggestions on the second set of joint proposals (Regulation 4.2)..... | 8 |
| B1. Observations and suggestions on proposed Standard A4.2.1 – Shipowners’ liability..... | 8 |
| B2. Observations and suggestions on proposed Standard A4.2.2 – Treatment of contractual claims | 9 |
| B3. Observations and suggestions on proposed Appendix A4-I..... | 10 |
| B4. Observations and suggestions on proposed Appendix B4-I..... | 10 |

Two sets of joint proposals to amend the Code of the MLC, 2006: Summary of observations and suggestions made by ILO Members

Introduction

1. In his letter of 4 October 2013¹ the Director-General invited all Members of the Organization, pursuant to paragraph 3 of Article XV of the Maritime Labour Convention, 2006 (MLC, 2006), to transmit, by 17 March 2014, any observations or suggestions concerning the two sets of proposals for amendments that had been submitted² jointly by the Shipowners' and the Seafarers' groups with respect to the Code provisions relating respectively to Regulation 2.5 and Regulation 4.2 of the Convention.
2. In accordance with paragraph 4 of Article XV, the present document provides a summary of the observations and suggestions that were communicated in response to the Director-General's letter. The following (23) Members responded with comments:³ Algeria, China, Estonia, Germany, Honduras, India, Japan, Latvia, Marshall Islands, Mauritius, Namibia, Netherlands, Nigeria, Norway, Panama, Portugal, Singapore, Spain, Sweden, Switzerland, United Republic of Tanzania, Thailand and United Kingdom.
3. Many of those governments confirmed that they had consulted their social partners with respect to their observations and suggestions. The Government of Portugal transmitted a copy of a letter addressed to it by the Shipowners' Association, which stated that it had no objection to due consideration being given to the proposals.
4. This summary has been prepared for the information of participants at the first meeting of the Special Tripartite Committee established under Article XIII of the MLC, 2006, and is relevant to the second item on the agenda of the meeting.⁴
5. It should be noted that under the *Standing Orders of the Special Tripartite Committee*,⁵ no suggestion can be discussed at the meeting unless it has been formally moved in the Committee in accordance with article 10 of the *Standing Orders*, by a representative, subject to seconding, or by a group.
6. The next sections set out first general observations and suggestions on the two sets of joint proposals. They are followed by sections A and B, which set out the specific comments on each of the sets of joint proposals organized by reference to the relevant proposed provision.

¹ Available on the ILO dedicated MLC, 2006, website at: http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_229694/lang--en/index.htm.

² In accordance with Article XV, paragraph 2, of the MLC, 2006.

³ The Government of the Republic of Croatia also responded indicating that comments would be forthcoming.

⁴ The agenda was adopted by the Governing Body at its 319th Session (October 2013) and transmitted by the Director-General in the letter of invitation to the meeting.

⁵ Available online at: http://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_183944/lang--en/index.htm.

Observations and suggestions on the two sets of joint proposals for amendments to the Code of the MLC, 2006

General observations and suggestions

7. The majority of governments welcomed or generally supported the proposals but also had comments on specific points.⁶ Others welcomed and generally supported the proposals and indicated that they did not have particular comments or objections to either of the proposals.⁷ Comments from two governments indicated that, for differing reasons, they did not support the proposals for amendments.⁸
8. One government, which welcomed these proposals, noted that Members were obliged under Regulation 2.5 to require ships flying their flag to provide financial security to ensure that seafarers are duly repatriated; the proposal defined the details and put this obligation in more concrete terms in a way that could contribute to curbing the abandonment of ships and crews (Germany).
9. Another government noted that, because of the brevity and lack of regulating provisions of paragraph 2 of Regulation 2.5 of the MLC, 2006, making implementation difficult, the establishment of a rapid and effective system of financial security to assist seafarers in the case of abandonment was needed as a matter of urgency. The development of paragraph 2 just referred to, through the proposal relating to Standard A2.5, now filled the present great vacuum in the Code of the Convention, clarifying the word “abandonment” in a way that should remove doubts as to cases in which a seafarer should be considered as “abandoned” and the forms in which financial security could be provided and as to the rights of the providers of financial security. This government also welcomed the fact that the paragraphs proposed for the implementation of Standard A4.2 clearly and precisely determined the scope of the financial security to ensure the payment of compensation following a contractual claim, setting out minimum requirements and noting the way to proceed, by making interim payments to avoid undue hardship where the elements of compensation, in the case of long-term disability of the seafarer concerned, were difficult to assess (Panama).
10. Another government similarly welcomed the proposed amendments as a development of the generally worded obligation on Members under paragraph 2 of Regulation 2.5. In addition, taking into account the seafarers’ right to repatriation, which was a fundamental pillar in the conditions for decent work that were protected by the MLC, 2006, it was fitting that this area should be included among those that needed to be inspected by both flag and port States and, where applicable, certified and the subject of ongoing review as part of the Declaration of Maritime Labour Compliance (DMLC) Part II. The proposed provisions relating to Regulation 4.2 were also considered appropriate since they clarified the shipowner’s responsibilities as well as the way in which the Member is to ensure their implementation. It was furthermore considered appropriate that their subject matter should

⁶ Some of the 23 while not expressly indicating general support provided editorial and other suggestions for adjustments to the text of the proposals: Algeria, China, Germany, Honduras, India, Japan, Latvia, Marshall Islands, Mauritius, Netherlands, Panama, Portugal, Singapore, Spain, United Republic of Tanzania, Thailand and United Kingdom.

⁷ Namibia, Nigeria, Norway and Sweden.

⁸ Estonia and Switzerland.

be included as an area that needed to be inspected by both the flag and the port State, and, where applicable, certified and the subject of ongoing review as part of the DMLC Part II (Spain).

- 11.** Another government pointed out the particular problem of abandonment that had resulted for its national seafarers from piracy attacks and suggested some additions to the proposals to take this into account (India).
- 12.** Some elements of the proposals, relating in particular to the proposed definitions concerning abandonment and the necessary maintenance and support of seafarers, were in need of further review from the point of view of coherence with the existing standards in the Convention concerning repatriation, food, accommodation and medical care (Germany).
- 13.** The need for lightening the administrative burden was stressed, for example by requiring a combination of documents rather than the issue of two or three new documents (Netherlands and Switzerland).
- 14.** A gradual implementation of the proposed amendments was suggested having regard to the effect of the amendments on the content of the Maritime Labour Certificate and the DMLC as well as on shipboard verification, which should however take place no later than the date of the intermediate inspection or the renewal inspection (Netherlands and Singapore).
- 15.** A number of governments made specific editorial suggestions to ensure consistency within the text or to make the intentions behind the text clearer. The specific suggestions that were made are set out below in sections A and B. It was also noted that if the amendments were adopted, then references to, for example, Standard A2.5 and A4.2 in the Part B Guidelines referring to them, and elsewhere in the Convention, would need to be amended, respectively, to “A2.5.1” and “A4.2.1” (the United Kingdom).
- 16.** One government expressed support for the proposals in principle and in general but considered them too descriptive, lengthy and detailed, making them more suitable for Guidelines rather than regulatory provisions (Portugal).
- 17.** Two governments expressed opposition to the proposed amendments and appendices. One government considered that it was not the task of a flag State to put in place a financial security system for seafarers or even to oversee the effectiveness of such a system; that its national law did not provide for the financial security system as provided for in the proposed amendments and was therefore not compatible with the proposals; and that a situation created in this way would give rise to inequality of treatment with respect to employees (Switzerland). Another government stated that it could not, at present, support the proposed paragraphs 2(c) and 9(a) of the proposed Standard A2.5.2, finding them unduly rigid taking into account IMO resolution A.930(22). It also could not support the proposals relating to Standard A4.2, believing that these proposals might be relevant as recommendations for national solutions and guidelines for the MLC, 2006 (Estonia).
- 18.** The concern for administrative burden and also a concern that governments not be held responsible in the event there is no private insurance protection available was also expressed by a government which generally supported the amendments. It was noted that, under both of the joint proposals, a very wide range of risks would need to be covered by the systems of financial security (varying from abandonment in case of bankruptcy of the shipowner or even the latter’s unwillingness to pay contractual claims because of natural disasters at sea). The concern was expressed that there might be some costly risks that needed to be covered but which could not be insured by any competent insurance company. Furthermore, the consequences were not clear if the shipowner failed to pay the insurance premium, nor was it clear who would be able to insure that risk (Netherlands).

19. For the sake of clarity, it was considered important to note in any documentation accompanying the amendments, when issued in their final form, that the amendments to the shipowners' financial security obligations did not affect the "system of protection" to be established in accordance with Standard A1.4, paragraph 5(c)(vi), relating to recruitment and placement services. This obligation stood alone and separate from the financial security obligations placed on shipowners (the United Kingdom).

20. The concern was expressed that, where proposals for amendments referred to situations covered by the existing provisions of the MLC, 2006, they must remain within the scope of those provisions (Germany).

A. Observations and suggestions on the first set of joint proposals (Regulation 2.5)

A1. Observations and suggestions on proposed Standard A2.5.2 – Financial security

21. Proposed paragraph 2:

- The definition of "abandonment" should be harmonized with the definition as per IMO resolution A.930(22) (Mauritius).
- The concept of "abandonment" in paragraph 2 does not cover all cases requiring financial security, in particular the cases listed in paragraph 1 of Standard A2.5 (Portugal).
- In the introductory part of the definition, the reference to a violation of "the requirements of this Convention or the terms of the seafarers' employment agreement" should be completed by the words "and/or any applicable collective bargaining agreement" (China).
- Although the proposals develop Regulation 2.5, paragraph 2, requiring ships to provide financial security "to ensure that seafarers are duly repatriated", paragraph 2 of the proposed Standard A2.5.2, on the definition of "abandonment", includes situations which, although serious, do not expressly require repatriation, such as the failure to pay wages over a period of at least two months (paragraph 2(c)). While there could be a link between this failure and repatriation, the right of repatriation would only apply for so long as the seafarer is away from his or her residence and country. Other considerations are thus mixed with those relating to the right to be duly repatriated. In addition, the proposed financial security system goes beyond ensuring that seafarers are duly repatriated, by stating (in the proposed paragraph 1) that the purpose of this system is "to assist seafarers in the event of abandonment of seafarers". It is noted that assistance of this kind, including the payment of arrears of wages, is provided for at the national level (Spain).

22. Proposed paragraph 2(b):

- The element in the definition, "has left the seafarer without the necessary maintenance and support", would cover even a minor breach of duty. The wording should closely follow existing Standard A2.5, paragraph 1(c), of the MLC, 2006 (Germany).

23. Proposed paragraph 2(c):

- This element of the definition of “abandonment” should be based on the general liability of failure to pay contractual wages without taking into account a period of time. The proposed exclusivity criterion of non-payment for a period of “at least two months” would impede promotion of equal treatment in the employment of seafarers (United Republic of Tanzania).

24. Suggested new paragraph 2(d):

- The following new case of abandonment should be added as subparagraph (d) of paragraph 2: namely where the shipowner has failed to continue payment of the contracted entitlements, including wages, compensation etc., to seafarers held captive/hostage by pirates or terrorist organizations (on sea or land, anywhere in the world) (India).

25. Suggested new paragraph 3:

- It is suggested that there should be a new paragraph added providing for confirmation that the seafarer concerned is considered to have been “abandoned” in order to facilitate the implementation of the amendments, and worded as follows: “Each Member shall have laws and regulations in place to acknowledge the abandonment of the seafarers working on ships flying its flag due to the conduct of shipowners under paragraph 2 of Standard A2.5.2, so that the seafarers deemed to be abandoned could get effective and expeditious assistance” (China).

26. Proposed paragraph 3:

- Since the State is responsible for establishing an appropriate financial security system, the content of paragraph 3 would be better placed in the Guidelines (Portugal).
- The last sentence, requiring a Member to determine the form of the financial security, should be deleted or preceded by the words, “Where such a financial security system does not exist”, to take account of the fact that such a system may already exist having regard to the obligations of flag States, including that referred to in paragraph 5(a) of the present Standard A2.5 (Marshall Islands).

27. Proposed paragraph 4:

- The phrase, “seafarer who *was* employed or engaged or working in any capacity ...”, should cover seafarers who are still working on the ship concerned or were so working immediately before the abandonment (Germany).
- The clause, “who was employed or engaged or working in any capacity”, is redundant in view of the definition of “seafarer” in article II, paragraph 1(f), of the Convention (Japan).
- The term “direct access” should be properly defined and the modality for direct access should be clarified (Mauritius).

28. Proposed paragraph 5:

- The references to “clothing” and to “other reasonable costs or charges arising from the abandonment” should be deleted since the latter phrase is already covered by the concept of “all expenses reasonably incurred by the seafarer”, in paragraph 9(b), a

concept that would also include clothing which is not expressly covered by the MLC, 2006 (Germany).

- In order for there to be an indication of what constitutes “adequate” and “necessary”, the following words should be added at the end of paragraph 5: “as provided by national laws, regulations or collective agreements” (Marshall Islands).

29. Proposed paragraph 6:

- The detailed requirement that documentary evidence of financial security be posted *in the seafarers’ accommodation* is not consistent with the present wording in the Convention. The wording should be replaced by, for example, the wording contained in Standard A5.1.3, paragraph 12: “... posted in a conspicuous place on board where it is available to the seafarers” (Germany). The replacement of “a prominent position” by “a conspicuous place” was also suggested by another government for the sake of consistency (China). Another suggestion (for the replacement of “posted” by “made available”) noted that seafarers’ accommodation may already contain many other mandatory documents which required seafarers’ attention, such as notices regarding safety and prevention of pollution; more flexibility was desirable (Singapore).
- The concept of “financial security provider” should be made clearer (Portugal).
- The documentary evidence should be specified by the administration and also in the DMLC Part I (Mauritius).
- Agreement was expressed with the choice of the term “documentary evidence” having regard to the justification given in footnote 3 of the document (Portugal).

30. Proposed paragraph 7:

- There should be no specific language requirement; it is sufficient that, where applicable, the documentary evidence be accompanied by an English translation (Germany).

31. Proposed paragraph 8:

- The concept of “the necessary justification of entitlement” by the seafarer concerned “in accordance with paragraph 2” should be clarified by referring to “the necessary justification *regarding the abandonment and the entitlements, expenses and costs* in accordance with paragraphs 2 and 9” (Germany).
- The phrase, “granted promptly upon request”, should be specified and the mechanism to be adopted should be specified (Mauritius).
- The authorized body to which the request for assistance from the financial security system is to be submitted should be specified, as well as any relevant information and supporting documents that must accompany the request (Thailand).

32. Proposed paragraph 9:

- It was noted that the introductory statement of the assistance to be provided by the financial security system referred to Regulations 2.2 and 2.5 of the MLC, 2006, relating respectively to wages and repatriation. It was considered that reference should also be made to Regulation 2.4 on the entitlement to leave (Honduras).

33. Proposed paragraph 9(a):

-
- The minimum limitation period in the case of seafarers' claims for wages should be reduced from four to three months as under the instruments relating to the insolvency of employers (in particular, the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), concerning the protection of workers' claims), unless the four-month minimum can be justified. Coverage of entitlements other than wage claims should be either defined more precisely (perhaps based on Convention No. 173) or deleted altogether. In line with the insolvency instruments, Members should be permitted to introduce socially acceptable ceilings on the coverage of outstanding wages and to adopt measures to prevent abuse (Germany).
 - The limitation period referred to above should be two months (instead of four), thus aligning it with the element of the definition of "abandonment" in paragraph 2(c) of the proposed Standard: there is no need to allow for the time lapse between the recognition of an abandonment situation and the limitation of financial security. Both are already defined (Marshall Islands).

34. Proposed paragraph 9(b):

- This provision should be made more specific (Germany and Mauritius) with a closer link to repatriation (Germany). Reference should be made to "all expenses reasonably incurred by the seafarer during the period of abandonment" (Mauritius).

35. Proposed paragraph 9(c):

- The reference to the seafarer's home as the destination of repatriation should be broadened in line with existing Guideline B2.5, paragraphs 6 and 7 (Germany and China).

36. Proposed paragraph 10:

- The cost of repatriation should cover travel ending with the seafarers' arrival at the "destination to which seafarers may be repatriated" rather than to their "home". The final words, "and any other reasonable costs or charges arising from the abandonment", should be deleted as open to question and redundant (Germany).

A2. Observations and suggestions on proposed Guideline B2.5.3 – Financial security

37. With respect to the requirement for interim assistance to be provided when time is needed "to check the validity of certain aspects of the seafarer's request" (presumably relating to repatriation, though this is not stated – see paragraph 21 above), it is difficult to understand what assistance could be provided immediately, and what would need to be postponed until substantiated (Spain).

38. For the sake of clarity, the reference to "the seafarer or a representative" should be to "the seafarer or a representative of the seafarer" (China).

39. Suggested new paragraph 2:

- In order to avoid the unnecessary detention of abandoned seafarers because of checking outstanding wages and other entitlements, the following new paragraph is suggested: "In implementation of paragraphs 8 and 9 of Standard A2.5.2, if time is needed to verify the validity of outstanding wages and other entitlements required by the seafarers due from the shipowner to the seafarer under their employment agreement, the seafarer or a representative of the seafarer should agree with the

repatriation arrangement after confirming that the verification procedure has been undertaken. This should not prevent the seafarer or a representative of the seafarer from receiving the necessary assistance (including outstanding wages and other entitlements) after accepting the repatriation” (China).

A3. Observations and suggestions on proposed Appendix A2-I

40. There are differences as compared with Appendix A4-I (reference to a “certificate” in the introduction of Appendix A2-I, as well as the reference under (i) to issuance by “the competent authority” in Appendix A4-I but not in A2-I). The appendices should be harmonized or the differences explained (Germany). The same observation is made also with reference to differences in (e) and (f) of the respective appendices (Marshall Islands). It was noted that Appendix A2-I referred to “*certificate or* other documentary evidence”, whereas paragraphs 6 and 7 of the proposed Standard A2.5.2 referred only to “documentary evidence”, which (paragraph 7) “shall contain the information required in Appendix A2-I”. The words “certificate or” could perhaps be inserted before “documentary evidence” in both paragraphs 6 and 7 (the United Kingdom) or the words “certificate or” should be deleted (China).

41. Clarification is necessary as to the provider of the financial security that would be responsible for supplying the shipowner with the attestation (Marshall Islands).

B. Observations and suggestions on the second set of joint proposals (Regulation 4.2)

B1. Observations and suggestions on proposed Standard A4.2.1 – Shipowners’ liability

42. *Proposed paragraph 8:*

- The wording should be modified to make it clear that the provisions on financial security were mandatory only in cases where the coverage of the professional risks were not available under social security systems (Spain).

43. *Proposed paragraph 8(a):*

- The reference to “the seafarer’s employment agreement” should be completed by the words “and/or any applicable collective bargaining agreement” (China).

44. *Proposed paragraph 8(c):*

- Doubts were expressed as to how the interim payment and the related assessment that is proposed would be implemented (Portugal).

45. *Proposed paragraph 8(d):*

- This subparagraph should begin, “payments received by the seafarer may be offset by the shipowner ...”. The proposed opening words, “in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such ...”, should be deleted as they seemed to be an interpretation of Regulation 4.2, paragraph 2, of the MLC, 2006 (Norway).

46. *Proposed paragraph 8(e):*

- Replace the term “next of kin” with “surviving dependants” and “designated beneficiary” with “other rightful claimants” (Germany).
- Where a contractual claim is not presented by the seafarer directly, provision should be made for a simple mechanism for checking credentials (Honduras).

47. *Proposed paragraphs 9 and 10:*

- These provisions should take account of the fact that, in the case of a statutory system of compulsory insurance, cancellation or non-renewal of the financial security is not legally possible (Germany).
- The phrase, “shipowner’s financial security”, should preferably be replaced by “financial security provided for in paragraph 8 of this Standard” (Japan).
- The only means of notification to seafarers is via the shipowner since flag States have no authority to regulate financial security providers directly. Arranging for the seafarer to receive *prior* notification is difficult and immediate notification of non-renewal is problematic. The phrase, “and be notified immediately if it is not to be renewed”, at the end of paragraph 9 should be deleted. Similarly, in paragraph 10, the clause, “if a shipowner’s financial security is to be cancelled”, and the final words, “upon non-renewal”, should be deleted (Marshall Islands).

48. *Proposed paragraph 11:*

- There should be more flexibility with respect to the posting of the documentary evidence “in a prominent position in the seafarers’ accommodation” – see paragraph 30 above (China, Germany and Singapore).
- Doubts were expressed with respect to the liability of the “financial security provider” and to the fact that there could be more than one such provider (Portugal).

B2. Observations and suggestions on proposed Standard A4.2.2 – Treatment of contractual claims

49. *Proposed paragraph 1:*

- One government was of the view that it is not clear why the definition of “contractual claim” makes comprehensive reference to the revised Standard A4.2.1, whereas the term is first used only in paragraph 8 of that Standard and afterwards refers exclusively to the system of financial security defined in the present Standard A4.2, paragraph 1(b). Unless a clarification can be provided in this regard, it is suggested that the opening words of paragraph 1 be amended to read, “For the purposes of Standard A4.2.1, *paragraph 8*” (reference in italics to be added), and that the reference to any claim relating to “sickness, injury or death” be replaced by any claim which relates to “*death or long-term disability of seafarers due to an occupational injury, illness or hazard*”, that is, the wording used in the present Standard A4.2, paragraph 1(b) (Germany).
- Similarly, another government noted that the definition of a “contractual claim” referred to “*any claim* which relates to sickness, injury or death occurring while the seafarer is serving under the seafarers’ employment agreement or arising from the

employment under such an agreement”, which would be understood as providing for a liability of a general nature and not only one that is based on an employment agreement or a collective agreement. Such a wide liability would entail changes in the national law and an increase in labour costs for shipowners. In addition, the definition should not cover social security surcharges – *recargo de prestaciones* (Spain).

- In the same direction, another government pointed out that, legally, a “contractual claim” arises from a non-performance or breach of contract by one of the parties. The best term would be “compensation claim” (Honduras).

50. Suggested new paragraph 2:

- It was noted that the “system of financial security” has not so far been defined. The following new paragraph is suggested so as to provide for a definition along the lines of that proposed for paragraph 3 of the proposed Standard A2.5.1, namely: “The system of financial security, as provided for by paragraph 1(b) of Standard A4.2.1, may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned” (Germany).

51. Proposed paragraph 2:

- In line with the suggestion in paragraph 49, the reference to “Standard A4.2.1” should be replaced by “Standard A4.2.1, *paragraph 8*” (Germany).
- Clarification is requested as to what is intended by the effective arrangements that are to be in place, “to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1” (Marshall Islands).

B3. Observations and suggestions on proposed Appendix A4-I

52. Heading: It was noted that the reference to “Regulation 2.5, paragraph 2” was wrong (Latvia and Switzerland).

53. See the observations in paragraph 40 above in relation to Appendix A2-I (Germany, Marshall Islands and the United Kingdom). It is suggested that point (e) should read “name and address of the provider of the financial security”, as in Appendix A2-I (the United Kingdom).

54. The question was raised as to who would be the competent authority for the purposes of point (i) (Portugal).

B4. Observations and suggestions on proposed Appendix B4-I

55. There should also be a requirement to insert the date of the incident, as this would demonstrate the timeliness of the action and allow the incident triggering the action to be identified more easily (United Kingdom).

56. In the first substantial paragraph of this appendix, the words “Seafarer’s employment and ...”, could be replaced by “Seafarer’s employment agreement and ...” (United Kingdom).