



CONFERENCE OF PARTIES TO THE
INTERNATIONAL CONVENTION ON
STANDARDS OF TRAINING,
CERTIFICATION AND WATCHKEEPING
FOR SEAFARERS, 1978
Agenda item 7

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**CONSIDERATION OF THE DRAFT AMENDMENTS TO THE SEAFARERS'
TRAINING, CERTIFICATION AND WATCHKEEPING (STCW) CODE**

Fitness for duty

**Submitted by Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia,
Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania,
Luxembourg, the Netherlands, Malta, Poland, Portugal, Romania, Slovakia, Slovenia,
Spain, Sweden, the United Kingdom and the European Commission**

SUMMARY

<i>Executive summary:</i>	This document puts forward relevant amendments for sections A-VIII/1 and B-VIII/1 concerning exceptions to hours of rest
<i>Strategic direction:</i>	5
<i>High-level action:</i>	5.2
<i>Planned output:</i>	5.2.2.1
<i>Action to be taken:</i>	Paragraph 11
<i>Related documents:</i>	STW 38/17, annex 11; STW 39/7/9; STW/ISWG 1/7/5; STW 41/16 and STCW/CONF.2/4 and 2/5

Background

1 The Sub-Committee on Standards of Training and Watchkeeping at its forty-first session (11 to 15 January 2010) (STW 41), considered the draft amended text for section A-VIII/1, relating to fitness for duty of seafarers and, in particular, paragraph 9 providing for potential exceptions to the minimum rest periods, as well as the possibility for the granting of compensatory leave, taking into account the proposals for amendments submitted by Norway (document STW 41/7/38) and the co-sponsors of the current submission (documents STW 41/7/50 and ISWG 1/7/5).

2 After an in-depth discussion and bearing in mind the divergence of opinion as regards the potential exceptions to the minimum rest periods stipulated in paragraph 9, the Sub-Committee agreed to retain both proposals in square brackets for a decision by the Diplomatic Conference.

Discussion

3 Considering the discussions in the Sub-Committee regarding these exceptions to rest periods since the very beginning of the revision of the STCW Convention, as well as concerns raised by different parties during this process, and in the interest of facilitating the progress on such an important matter for preventing fatigue of crews, the co-sponsors reviewed their previous submissions on this issue, in conjunction with the draft text for the Code as in document STCW/CONF.2/4 and have the observation as given below.

4 First of all, the co-sponsors would like to recall that according to the agreed principles for the review of the STCW Convention, the main aspiration for reviewing regulation VIII/1, and related parts of the Code, on fitness of duty is to harmonize it with the relevant provisions in ILO Convention No.180, which will be eventually replaced by the Maritime Labour Convention (2006) once this enters into force. To ensure consistency between the relevant provisions of both Conventions, the co-sponsors proposed the incorporation in section A-VIII/1 of several ILO provisions concerning working time regime of seafarers, which are already agreed by the Sub-Committee.

5 In view of the above and bearing in mind that the ILO Convention allows for exceptions to the limits for hours of rest for seafarers, the underlying intent of the exception clause stipulated in paragraph 9, which was also initially put forward by the co-sponsors, was precisely to insert in the STCW Convention the same possibility for exceptions to minimum rest periods, as provided for by the ILO Conventions, including the absolute minimum of 70 hours of rest contained in the relevant resolution adopted in conjunction with ILO No.180. The intention of the relevant provisions is to accommodate the necessary flexibility for shipping operators, while ensuring a minimum sufficient rest for seafarers.

6 While the co-sponsors reiterate the need to maintain consistency in international legislation as regards rest periods for seafarers, they believe that it is necessary to take due account of the very nature of the STCW Convention, whose core objective is to primarily safeguard safety of navigation and the protection of the environment.

For this reason and since the ILO provisions on exceptions to the limits for hours of rest for seafarers do not give any guidance as to the use or the limits of such exceptions and in order to strike the right balance between flexibility for operators and prevention of fatigue, the co-sponsors believe that while the incorporation of the essence of the relevant provisions of the ILO Convention on exceptions from the minimum rest periods should be inserted in the STCW Convention, the relevant provisions should be adapted to the prerequisites of safety, taking due consideration above all of the need to ensure sufficient rest for the seafarers.

7 Hence, while the co-sponsors confirm their support for maintaining the possibility for exceptions, as currently stipulated in paragraph 9 (first option in document STCW/CONF.2.4, page 225), the specific reference to provisions of section B-VIII/1 relating to prevention of fatigue (as in paragraph 9*bis* of the aforementioned document) and the guidance regarding the origin and the application of such exceptions in paragraph 3*bis* in section B-VIII/1, they reiterate the need to accompany exceptions to rest periods with additional safeguards by providing, in particular, for a limit of the exceptions in time, as well as a daily minimum amount of hours of rest, in cases where Parties decide to authorize such exceptions (see below under point 8). This view was also shared by several delegations during the discussions at STW 41.

Proposals

8 In view of the above, the co-sponsors put forward proposals for amendments to paragraph 9 of section A-VIII/1, as set out in annex 1. These proposals are intended to:

- .1 restrict the exceptions to the ordinary weekly limits of hours of rest and to paragraph 3 of section A-VIII/1 (which provides potential division of hours of rest into no more than two periods, one of which shall be at least 6 consecutive hours of rest);
- .2 provide for a limit in time; and
- .3 include specific safeguards by setting daily minimum hours of rest, including a consecutive rest period.

9 Moreover, with regard to cases of emergency and other overriding operational conditions, in which the requirements for rest periods need not be maintained, as provided for in paragraph 4 of section A-VIII/1 of the Code, the co-sponsors propose to include a reference to security drills that should also be part of the cases mentioned in this paragraph. The relevant proposed amendments are set out in annex 1.

10 Finally, the co-sponsors propose to improve the guiding definition of the terms overriding “operational conditions” in part B of the STCW Code. The objective of this proposal is to ensure that “overriding operational conditions” have a safety/security rather than a commercial imperative. The relevant proposed amendments are set out in annex 2.

Action requested of the Conference

11 The Conference is invited to consider the proposal and decide as appropriate.

ANNEX 1

PROPOSED AMENDMENTS TO THE STCW CODE

PART A

CHAPTER VIII

Standards regarding watchkeeping

Notes: 1) The reference texts are from document STCW/CONF.2/4.
 2) Proposed amendments are shown as underlined and deleted text as ~~strikethrough~~.

Section A-VIII/1 – Fitness for duty

1. Paragraph 9 shall be amended as follows:

“9 ~~Nothing in this Convention shall prevent Parties~~ may apply from applying exceptions to the minimum rest periods set in paragraphs 2.2 and 3 above, which shall not limits, as provided for by other relevant international Conventions. These exceptions shall under no circumstances be less than 70 hours of rest in any 7-day period and shall not extend beyond 2 consecutive weeks be applied on a continuous basis on board. For watchkeeping seafarers, sSuch exceptions shall only be applied on condition that the hours of rest in any 24-hour period are not less than 10, of which 8 hours shall be include at least 6 consecutive hours of consecutive rest and the exceptions from paragraph 3 shall not extend beyond two days.”

2. Paragraph 4 shall be amended as follows:

“4 The requirements for rest periods laid down in paragraphs 2 and 3 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, fire-fighting, ~~and~~ lifeboat and security drills, as well as ~~and~~ drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.”

ANNEX 2

PROPOSED AMENDMENTS TO CHAPTER VIII OF THE STCW CODE

PART B

CHAPTER VIII

Guidance regarding watchkeeping

Notes: 1) The reference texts are from document STCW/CONF.2/5.
2) Proposed amendments are shown as underlined and deleted text as ~~striketrough~~.

Section B-VIII/1 – Guidance regarding fitness for duty

Prevention of fatigue

Paragraph 1 shall be amended as follows:

“1 In observing the rest period requirements, “overriding operational conditions”, referred to in section A-VIII/1 paragraph 4, should be construed to mean only essential shipboard work which cannot be delayed for safety, security or environmental reasons and ~~or~~ which could not reasonably have been anticipated at the commencement of the voyage. Such “overriding operational conditions” should be regarded as exceptional and should not arise as part of regular practice.”
