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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9721/17 MAR 113 CODEC 933
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/45/EC on safety rules and standards for passenger ships
	– Analysis of the final compromise text with a view to agreement

CONTEXT AND CONTENT OF THE PROPOSAL

1. On 7 June 2016, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council.
2. The proposal forms part of a broader review of the EU passenger ship safety legislation, in line with a "fitness check" carried out by the Commission.¹
3. Directive 2009/45/EC of the European Parliament and of the Council² aims at attaining a high level of safety and at removing barriers to trade, by setting harmonised safety standards at an appropriate level for passenger ships and craft operating domestic services.

¹ "REFIT – Adjusting Course: EU Passenger Ship Safety Legislation Fitness Check", doc. 13230/15 + ADD 1 and 2.

² Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships, OJ L 163, 25.6.2009, p. 1.

4. The Commission proposes to clarify and simplify the safety rules and standards for passenger ships so that they are easier to update, monitor and enforce.

STATE OF PLAY

5. The Council reached a general approach on the proposal on 1 December 2016.
6. The European Parliament Committee on Transport and Tourism (TRAN) appointed Ms Daniela Aiuto (EFDD-Italy) as rapporteur on 15 June 2016. The TRAN Committee adopted its report on the proposal (with 26 amendments) on 11 April 2017.
7. On 11 May 2017, a first informal trilogue took place, followed by a technical meeting on 2 June. Good progress was made at these meetings, which is evident from the number of provisions marked as "agreed" in the annex to this report.
8. The second trilogue took place on 15 June 2017 in Strasbourg.
9. At that trilogue, an agreement *ad referendum* was reached, the main elements of which are described below.
10. Changes compared to the general approach are marked in **bold** (new text) and ~~striketrough~~ (deleted text).

THE FINAL COMPROMISE TEXT

11. As an initial remark, the Presidency would like to stress the fact that the European Parliament is willing to accept a very large part of the Council general approach. The Parliament is also prepared to accept several of the Council's compromise proposals without any changes. This is for example the case for the recitals on tenders (recital 1a), sailing ships (1b), offshore vessels (1c) and the role of EMSA (11c). The Parliament was convinced to withdraw its amendment concerning the definition of traditional ships (Article 2(zc)) when it realised that it would create a loophole in the legislation. Furthermore, the Parliament accepted the Council general approach as concerns delegated acts.

12. In terms of more important changes to the general approach, attention is drawn to the following:

- Penalties (new recital 10a): the Parliament insisted very strongly on its amendment concerning the article on penalties (amendment 26). The Presidency explained that it would not be appropriate to make amendments to this standard article and include elements of criminal law. The Parliament could eventually accept a generally formulated recital, which repeats the formulation of the article.
- Human element (recital 11b): the Parliament also insisted on the inclusion of a reference to cross-border "rescue and emergency situations". The Presidency accepted this with the caveat that it should relate to training in line with international requirements.
- Transposition derogation for landlocked countries (Article 3(2a) and recital 11a): the Parliament could agree to moving the transposition derogation to the scope, a possible solution indicated by the Presidency when the mandate was discussed.
- Sea areas and sea routes (Article 2(da) and Article 4): the Parliament accepted the Council compromises for the definition without changes and only asked for one minor addition in Article 4 ("covering the sea routes in Greece").
- Database and website (Article 9(4) and recital 7): by specifying that the Commission and Member States shall have access to the database, there is no longer any need for implementing acts for this issue. Only adopted measures, not draft notified measures, would be made accessible on a public website.
- Ships built in an equivalent material (Article 6(6)): the compromise found for the transitional period, six years, is in between the two institutions positions (the Parliament five years, the Council seven years).
- Aluminium ships (Article 6(6a)): the Parliament's main problem with this derogation was its application to new ships. The Parliament had completely excluded new ships from the possibility to derogate. After long discussions, a compromise was found that would make the derogation applicable to new ships for 10 years and to existing ships 12 years after the entry into force of the Directive.

- Transposition deadline: the Parliament could not accept the 36 months provided for in the Council's general approach, and suggested a deadline of 18 months. After further negotiation, the Presidency agreed *ad referendum* to 24 months, given that it was necessary for a successful outcome.

13. The Presidency considers that the agreement reached with the European Parliament is very balanced and takes into account all the concerns raised by Member States throughout the negotiations.

CONCLUSION

14. In the light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the Annex with a view to reaching an agreement at first reading with the European Parliament;
- allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Directive in the same form as set out in the Annex to this report, the Council would adopt the Directive in the form of the Commission proposal as thus amended by the Parliament.

2016/0170 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/45/EC on safety rules and standards for passenger ships

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

Whereas:

- (1) To maintain a high level of safety **and thereby passenger confidence** provided by common safety standards defined by Directive 2009/45/EC of the European Parliament and of the Council² and to preserve a level playing field, the application of that Directive should be improved. Directive 2009/45/EC should apply only to passenger ships and craft for which its safety standards have been designed. A number of specific ship types should be therefore excluded from its scope, such as tenders, sailing ships or ships transporting trained personnel engaged in business of the ship or offshore installations.
- (1a) Ship-carried tenders are used to ferry passengers from passenger ships directly to shore and back, undertaking the shortest safe sea route. They are not appropriate, and should not be used, for other types of services such as coastal sightseeing excursions. Such excursions should be undertaken by ships that meet the requirements for passenger ships of the coastal State, as noted inter alia by the IMO guidelines (MSC.1/Circ. 1417 on Guidelines for passenger ship tenders). Member States and the Commission should promote discussion at the IMO with a view to review the guidelines in order to increase safety. The Commission should assess the need to make the guidelines mandatory.**
- (1b) Directive 2009/45/EC of the European Parliament and of the Council excludes passenger ships that are not propelled by mechanical means from its scope. Sailing ships should not be certified in accordance with that Directive, where their mechanical propulsion is only intended for auxiliary and emergency use. The Commission should therefore assess the need for common European requirements for this category of passenger ship by 2020.**

² Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

- (1c) **Offshore installations are served by vessels that transport industrial personnel. Those industrial personnel are required to successfully complete a course of mandatory safety training and to satisfy certain mandatory medical fitness criteria. They should therefore be covered by different and specific safety rules that are outside the scope of this Directive. Member States and the Commission should actively support the ongoing work of the IMO in the field of safety standards for offshore vessels, further to IMO resolution MSC.418(97).**
- (2) The Regulatory Fitness Programme (REFIT)³ has shown that not all Member States certify aluminium ships under Directive 2009/45/EC. This creates an uneven situation that undermines the objective of achieving a common, high safety level for passengers sailing domestically in the Union. To avoid the non-uniform application arising from the interpretation of the Directive's scope related to the definition of aluminium as an equivalent material and the applicability of the corresponding fire safety standards, the definition of the equivalent material should be clarified. **Member States should be allowed to opt for stricter fire prevention measures in accordance with the provisions of this Directive for additional safety requirements.**
- (2a) A significant number of passenger ships built in aluminium alloy ensure constant frequent maritime connections between different ports within a Member State. In view of the serious consequences on such transport operations and related socio-economic conditions, and given the financial and technical implications for existing and new ships which would arise from complying with the requirements of this Directive, those Member States should have the possibility to apply, for a limited period of time, national law to such passenger ships, while ensuring that the level of safety is adequately maintained.

³ COM(2015) 508.

- (3) In view of increasing legal clarity and consistency, **and thereby increasing the level of safety**, a number of definitions and references should be updated and further aligned with the related international or Union rules. In doing so, special care should be taken not to alter the existing scope of Directive 2009/45/EC. In particular, the definition of traditional ship should be better aligned with Directive 2002/59/EC of the European Parliament and of the Council⁴, while preserving the current criteria of the year of built and type of material. The definition of pleasure yacht and craft should be further aligned with the International Convention for the Safety of Life at Sea (SOLAS Convention).
- (4) In view of the principle of proportionality, the current prescriptive requirements derived from the SOLAS Convention have proven difficult to adapt to small passenger vessels below 24 meters in length. Furthermore, small ships are primarily built in other materials than steel and only a very limited number of such ships have been therefore certified under Directive 2009/45/EC. In the absence of specific safety concerns and adequate standards provided by the Directive, ships below 24 meters in length should therefore be excluded from its scope and should be subjected to specific safety standards determined by Member States that are better placed to assess the local limitations of navigation for these ships in terms of distance to coast or port and weather conditions. **In determining those standards, Member States should take into account guidelines to be published by the Commission. Those guidelines should take into consideration any international agreements and conventions by the IMO, as appropriate, and should avoid introducing additional requirements that go beyond existing international rules. The Commission is invited to adopt such guidelines as soon as possible.**

⁴ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

- (5) To further simplify the definitions of sea areas provided for by Directive 2009/45/EC and to minimise the disturbances for Member States, the redundant or inadequate criteria should be removed. While maintaining the safety level, the definition of sea areas in which ships of Class C and D may operate should be simplified by removing the criterion of 'where the shipwrecked persons can land' and by removing the 'distance to the place of refuge' for the purpose of defining the sea areas. The appropriateness of a particular coastline as a place of refuge is a dynamic parameter that should be assessed on a case by case basis by Member States and, where necessary, any operational restrictions related to the distance from a place of refuge for a particular ship should be noted in the Passenger Ship Safety Certificate.
- (5a) Due to the specific geographical and weather characteristics and the high number of islands that need to be served regularly and frequently in Greece, both with the mainland or amongst them, and the ensuing high number of possible maritime connections, Greece should be allowed to derogate from the requirement of establishing sea areas. Instead, Greece should be allowed to classify passenger ships according to the specific sea route in which they operate, while maintaining the same criteria for classes of passenger ships and the same safety standards.
- (6) To remove unintended negative consequences of the current provisions whereby converted cargo ships may not be considered as new passenger ships, it should be clarified that the conversion requirements apply to any ship, not only existing passenger ships.
- (6a) Since, in accordance with Directive 2009/16/EC of the European Parliament and of the Council⁵, a port State may inspect a passenger ship or a high-speed passenger craft flying the flag other than that of the port State, when engaged on domestic voyages, the specific provisions of Article 5(3) of Directive 2009/45/EC are **redundant** and should be deleted.

⁵ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L OJ L 131, 28.5.2009, p. 57).

- (6b) In view of the differences in approach between the SOLAS requirements on damage stability and the specific Union damage stability requirements for ro-ro passenger ships contained in Directive 2003/25/EC of the European Parliament and of the Council⁶, the need for and the added value of Directive 2003/25/EC should be assessed based on whether those SOLAS requirements ensure the same safety level.
- (7) To increase the transparency and to facilitate the notification of exemptions, equivalencies and additional safety measures by Member States, a database should be established and maintained for this purpose by the Commission. It should include the notified measures in their draft and adopted form. **The adopted measures should be made publicly accessible.**
- (8) In view of the changes brought about by the Treaty on the Functioning of the European Union, the powers conferred on the Commission to implement Directive 2009/45/EC should be updated correspondingly. Implementing acts should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.
- (9) In order to take account of developments at international level and experience and to increase transparency, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of excluding amendments to the international instruments from the scope of this Directive, if necessary, and updating the technical requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁶ Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships (OJ L 123, 17.5.2003, p. 22).

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (10) Since the specific references in Article 14 to ongoing work in the IMO have become obsolete, that Article should be deleted. However, the general objectives of the international action to improve passenger ship safety and establish a level playing field remain relevant and **should be pursued in line with the Treaties. To that end, the Member States and the Commission should work within the IMO framework to revise and improve the regulations of the SOLAS Convention.**
- (10a) **It is important that any penalties laid down by Member States be properly implemented and be effective, proportionate and dissuasive.**
- (11) In view of the full monitoring cycle of European Maritime Safety Agency (EMSA) visits, the Commission should evaluate the implementation of Directive 2009/45/EC no later than [seven years after the date referred to in the second subparagraph of Article 2(1)] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all information necessary for this evaluation.
- (11a) **In order not to impose a disproportionate administrative burden on landlocked Member States with no ships flying their flag that fall in the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. This means that as long as this condition is fulfilled, they are not obliged to transpose this Directive.**
- (11b) **The human element is a fundamental part of ship safety and the procedures related to it. In order to maintain a high level of safety, it is necessary to take into account the link between safety, shipboard living, working conditions and training, including training related to cross-border rescue and emergency operations in line with international requirements. The Member States and the Commission should therefore play a proactive role at an international level in order to monitor and improve the social dimension for seafarers on board ships.**
- (11c) **In order to facilitate the implementation process, EMSA should support the Commission and the Member States in line with the relevant provisions of Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁸.**

⁸ **Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).**

(12) Directive 2009/45/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/45/EC

Directive 2009/45/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

"(a) 'International Conventions' means the following conventions together with the Protocols and amendments thereto, i.e. in their up-to-date versions:

(i) the 1974 International Convention for the Safety of Life at Sea (the 1974 SOLAS Convention); and

(ii) the 1966 International Convention on Load Lines;"

(b) point (b) is replaced by the following:

"(b) 'Intact Stability Code' means the 'Code on Intact Stability for all types of ships covered by IMO Instruments' contained in IMO Assembly Resolution A.749(18) of 4 November 1993, or the 'International Code on Intact Stability, 2008' contained in IMO Resolution MSC.267(85) of 4 December 2008, in their up-to-date versions;"

(c) point (g)(ii) is replaced by the following:

"(ii) their maximum speed, as defined in Regulation 1.4.30 of the 1994 High Speed Craft Code and Regulation 1.4.38 of the 2000 High Speed Craft Code, is less than 20 knots;"

(d) point (m) is replaced by the following:

"(m) 'bow height' means the bow height defined in Regulation 39 of the 1966 International Convention on Load Lines;"

(da) point (q) first subparagraph is replaced by the following:

"sea area or sea route means any sea area or sea route established pursuant to Article 4;"

(e) point (r) is replaced by the following:

"(r) 'port area' means an area other than a sea area listed pursuant to Article 4(2), as defined by the Member States, extending to the outermost permanent harbour works forming an integral part of the harbour system, or to the limits defined by natural geographical features protecting an estuary or similar sheltered area;"

(f) point (s) is deleted;

(g) point (u) is replaced by the following:

"(u) 'port State' means a Member State to or from whose port(s) a ship or craft, flying a flag other than the flag of that Member State, is carrying out domestic voyages;"

(h) point (v) is replaced by the following:

"(v) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council*;

* Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).";

(i) point (y) is replaced by the following:

"(y) 'persons with reduced mobility' means anyone who has a particular difficulty when using public transport, including elderly persons, persons with disabilities, persons with sensory impairments and wheelchair users, pregnant women and persons accompanying small children;"

(j) the following points are added:

"(z) 'sailing ship' means a ship propelled by sails even if fitted with mechanical propulsion for auxiliary and emergency purposes;

(za) 'equivalent material' means aluminium alloy or any other non-combustible material which, by itself or due to the insulation provided, maintains structural and integrity properties equivalent to steel at the end of the applicable exposure to the standard fire test;

(zb) 'standard fire test' means a test in which specimens of the relevant bulkheads or decks are exposed in a test furnace to temperatures corresponding approximately to the standard time-temperature curve in accordance with the test method specified in the 2010 International Code for Application of Fire Test Procedures, contained in IMO Resolution MSC.307(88) of 3 December 2010, in its up-to-date version;

(zc) 'traditional ship' means any kind of historical passenger ship designed before 1965 and their replicas built predominantly with the original materials, including those designed to encourage and promote traditional skills and seamanship, that together serve as living cultural monuments, operated according to traditional principles of seamanship and technique;

(zd) 'pleasure yacht or pleasure craft' means a vessel not engaged in trade, regardless of the means of propulsion;

(ze) 'tender' means a ship-carried boat used for transferring more than 12 passengers from a stationary passenger ship to shore and back;

(zea) 'offshore service ship' means a ship used to transport and accommodate industrial personnel who do not conduct work on board that is essential to the business of the ship;

(zeb) 'offshore service craft' means a craft used to transport and accommodate industrial personnel who do not conduct work on board that is essential to the business of the craft;

(zff) 'repairs, alterations and modifications of a major character' means any of the following:

- any change that substantially alters the dimensions of a ship, e.g., lengthening by adding new midbody,
- any change that substantially alters the passenger-carrying capacity of a ship, e.g., vehicle deck converted to passenger accommodation,
- any change that substantially increases a ship's service life, e.g., renewal of passenger accommodation on one entire deck,
- any conversion of any type of ship into a passenger ship.";

(2) Article 3 is replaced by the following:

"Article 3
Scope

1. This Directive applies to the following passenger ships and craft, regardless of their flag, when engaged on domestic voyages:
 - (a) new and existing passenger ships of 24 meters in length and above;
 - (b) high-speed passenger craft.

Each Member State, in its capacity as port State, shall ensure that passenger ships and high-speed passenger craft, flying the flag of a State which is not a Member State, fully comply with the requirements of this Directive, before they may be engaged on domestic voyages in that Member State.

2. This Directive does not apply to:

(a) passenger ships which are:

- (i) ships of war and troopships;
- (ii) sailing ships;
- (iia) ships not propelled by mechanical means;
- (iii) vessels constructed in material other than steel or equivalent and not covered by the standards concerning High Speed Craft (Resolution MSC 36(63) or MSC.97(73)) or Dynamically Supported Craft (Resolution A.373(X));
- (iv) wooden ships of primitive build;
- (v) traditional ships;
- (vi) pleasure yachts;
- (vii) ships exclusively engaged in port areas;
- (viii) offshore service ships; or
- (ix) tenders;

(b) high-speed passenger craft which are:

- (i) craft of war and troopcraft;
- (ii) pleasure craft;
- (iii) craft exclusively engaged in port areas; or
- (iv) offshore service craft.

- 2a. Member States which do not have seaports and which have no passenger ships or craft flying their flag that fall within the scope of this Directive may derogate from the provisions of this Directive except for the obligation set out in the following subparagraph.**

Those Member States which intend to avail themselves of such derogation shall communicate to the Commission at the latest on [date of transposition of this Directive] if the conditions are met and shall inform the Commission annually thereafter of any subsequent change. Such Member States may not allow passenger ships or craft that fall within the scope of this Directive to fly their flag until they have transposed and implemented this Directive."

- (3) Article 4 is replaced by the following:

"Article 4

Categorisation of sea areas and classes of passenger ships

1. Sea areas are divided into the following categories:

‘Area A’ means a sea area outside of sea area B, C and D if any.

‘Area B’ means a sea area, whose geographical coordinates are at any point no more than 20 miles from the line of coast, corresponding to the medium tide height, but outside of sea area C and D if any.

‘Area C’ means a sea area, whose geographical coordinates are at any point no more than 5 miles from the line of coast, corresponding to the medium tide height, but outside of sea area D if any.

Additionally the probability of the significant wave height exceeding 2,5 metres shall be smaller than 10% for a period of one-year for all-year-round operation, or for a specific period for seasonal operation, such as summer period operation.

‘Area D’ means a sea area, whose geographical coordinates are at any point no more than 3 miles from the line of coast, corresponding to the medium tide height.

Additionally the probability of the significant wave height exceeding 1,5 metres shall be smaller than 10 % for a period of one-year for all-year-round operation, or for a specific period for seasonal operation, such as summer period operation.

2. Each Member State shall:

- (a) establish, and update when necessary, a list of sea areas under its jurisdiction;
- (b) determine the inner border of the sea area closest to the line of the coast;
- (c) publish the list in a public database available on the Internet site of the competent maritime authority;
- (d) notify to the Commission the location of such information, and when modification made to the list.

3. By way of derogation **from the obligation to establish a list of sea areas**, Greece may establish, and update when necessary, a list of sea routes **covering the sea routes in Greece** instead of a list of sea areas, using the corresponding criteria for categories set out in paragraph 1.

4. Passenger ships are divided into the following classes according to the sea area in which they may operate:

‘Class A’ means a passenger ship engaged on domestic voyages in sea areas A, B, C and D.

‘Class B’ means a passenger ship engaged on domestic voyages in sea areas B, C and D.

‘Class C’ means a passenger ship engaged on domestic voyages in sea areas C and D.

‘Class D’ means a passenger ship engaged on domestic voyages in sea areas D.

5. For high-speed passenger craft the categories defined in Chapter 1 (1.4.10) and (1.4.11) of the 1994 High Speed Craft Code, or Chapter 1 (1.4.12) and (1.4.13) of the 2000 High-Speed Craft Code shall apply.";

(4) Article 5 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

"Each Member State, acting in its capacity as port State, shall recognise the High Speed Craft Safety Certificate issued by another Member State for high-speed passenger craft, when engaged on domestic voyages, or the Passenger Ship Safety Certificate referred to in Article 13 issued by another Member State for passenger ships when engaged on domestic voyages.";

(b) paragraph 3 is deleted;

(ba) paragraph 4 is replaced by the following:

4. Marine equipment complying with the requirements laid down pursuant to Directive 2014/90/EU of the European Parliament and of the Council** shall be considered to be in conformity with the requirements laid down pursuant to this Directive.

** Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (OJ L 257, 28.8.2014, p. 146).";

(5) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

"(a) the construction and maintenance of the hull, main and auxiliary machinery, electrical and automatic plants shall comply with the standards specified for classification by the rules of a recognised organisation, or equivalent rules used by an Administration in accordance with Article 11(2) of Directive 2009/15/EC of the European Parliament and of the Council*.

* Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p. 47).";

(ii) point (c) is deleted;

(b) in point (b) of paragraph 2, point (ii) is deleted;

(ba) point (b) of paragraph 2, point (iii) is replaced by the following:

"(iii) notwithstanding point (i), new passenger ships of Class D are exempted from the minimum bow height requirement laid down in the 1966 International Convention on Load Lines;"

(c) paragraph 3 is amended as follows:

(i) points (c) and (d) are replaced by the following:

"(c) existing passenger ships of Classes C and D shall comply with the specific relevant requirements in this Directive and in respect of matters not covered by such requirements with the rules of the Administration of the flag State; such rules shall provide an equivalent level of safety to that of Chapters II-1 and II-2 of Annex I, while taking into account the specific local operational conditions related to the sea areas in which ships of such classes may operate;

before existing passenger ships of Classes C and D can be engaged on regular domestic voyages in a port State, the Administration of the flag State shall obtain concurrence of the port State on such rules;

(d) where a Member State is of the view that rules required by the Administration of the port State pursuant to point (c) of this paragraph are unreasonable, it shall immediately notify the Commission thereof. The Commission shall decide, by means of an implementing act, whether the rules of the Administration of the port State are reasonable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).";

(ii) points (e) and (f) are deleted;

(d) paragraph 4 is amended as follows:

(i) in point (a), the third indent is replaced by the following:

"— they fully comply with the requirements of the Code of Safety for Dynamically Supported Craft (DSC Code) in IMO Resolution A.373(10), in its up-to-date version;"

(ii) point (c) is replaced by the following:

"(c) the construction and maintenance of high-speed passenger craft and their equipment shall comply with the rules for the classification of high-speed craft of a recognised organisation, or equivalent rules used by an Administration in accordance with Article 11(2) of Directive 2009/15/EC.";

(e) the following paragraphs 5, 6 and 6a are added:

"5. With regard to new and existing ships repairs, alterations and modifications of a major character and outfitting related thereto shall be in compliance with the requirements for new ships as prescribed in point (a) of paragraph 2; alterations made to a ship which are intended solely to achieve a higher survivability standard shall not be regarded as modifications of a major character.

6. Ships built in an equivalent material before the entry into force of this Directive shall comply with its requirements by [6 years after the date referred to in the second subparagraph of Article 2(1)].

6a. By way of derogation, a Member State who has more than 60 passenger ships made from aluminium alloy flying its flag on [*insert: date of entry into force*] may exempt **from the provisions of this Directive**,

a) for a period of **10 years after the date of entry into force of this Directive**, Class B, C and D passenger ships built in aluminium alloy **after that date**; **and**

- b) for a period of 12 years after the date of entry into force of this Directive, Class B, C and D passenger ships built in aluminium alloy before that date,**

provided that they operate exclusively between ports of that Member State.

Any Member State wishing to avail itself of this derogation shall notify the Commission of its intention to avail itself of this derogation at the latest on [*insert: date of transposition*] as well as inform the Commission of the content. Any subsequent change shall also be communicated to the Commission. The Commission shall inform other Member States in accordance with Article 9(4).";

- (6) Article 7 is amended as follows:

- (a) paragraph 1 is replaced by the following:
- (b) "1. Ro-ro passenger ships of Class C, the keel of which was laid or which were at a similar stage of construction on or after 1 October 2004, and all ro-ro passenger ships of Classes A and B shall comply with Articles 6, 8 and 9 of Directive 2003/25/EC.";
- (c) paragraph 2 is deleted;

- (7) Article 8 is amended as follows:

- (a) in paragraph 3, the second subparagraph is deleted;
- (b) paragraph 4 is deleted;

- (8) Article 9 is amended as follows:

- (a) paragraph 2 is replaced by the following:
 - "2. A Member State may, subject to the procedure laid down in paragraph 4, adopt measures allowing equivalents for certain specific requirements of this Directive, provided that such equivalents are at least as effective as such requirements.";

(b) paragraph 4 is replaced by the following:

"4. A Member State which avails itself of the provisions of paragraph 1, 2 or 3 shall proceed in accordance with the second to seventh subparagraphs of this paragraph.

The Member State shall notify the Commission of the measures which it intends to adopt, including particulars to the extent necessary to confirm that the level of safety is adequately maintained.

If, within a period of six months from the notification, the Commission decides, by means of an implementing act, that the proposed measures are not justified, the said Member State shall be required to amend or not to adopt the proposed measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).

The adopted measures shall be specified in the relevant national legislation and communicated to the Commission and to the other Member States.

Any such measures shall be applied to all passenger ships of the same Class or to craft when operating under the same specified conditions, without discrimination with regard to their flag or to the nationality or place of establishment of their operator.

The measures referred to in paragraph 3 shall apply only for as long as the ship or craft operates under the specified conditions.

The measures referred to in the second and fourth subparagraph shall be notified by means of a database established and maintained by the Commission for such purpose. The Commission **and Member States shall have access to that** database. **The adopted measures shall be made available by the Commission on a publicly accessible website."**

(c) in paragraph 5, point (c) is replaced by the following:

"(c) the Commission shall decide, by means of an implementing act, whether or not the decision of the Member State to suspend the operation of such ship or craft or to impose the additional measures is justified for reasons of serious danger to safety of life or property, or to the environment, and, if the suspension or the measures are not justified, that the Member State concerned shall be required to withdraw the suspension or the measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).";

(9) Article 10 is amended as follows:

(a) in paragraph 1, point (d) is replaced by the following:

"(d) the specific references to the 'International Conventions' and IMO resolutions referred to in points (g), (m), (q), and (zb) of Article 2, point (a) of Article 3(2), point (b) of Article 6(1) and point (b) of Article 6(2).";

(aa) in paragraph 2,

(i) point (b) is replaced by the following:

"(b) adjust the technical specifications found in the amendments made to International Conventions for type B, C and D ships and craft, in the light of experience";

(ii) the following points (c) and (d) are added:

"(c) simplify and clarify technical elements, in the light of implementation experience;

(d) update the references to other related Union instruments applicable to domestic passenger ships.";

(b) paragraphs 3 and 4 are replaced by the following:

- "3. The Commission is empowered to adopt delegated acts in accordance with Article 10a in order to adopt amendments referred to in paragraphs 1 and 2 of this Article.
4. In exceptional circumstances, where duly justified by an appropriate analysis by the Commission and in order to avoid a serious and unacceptable threat to maritime safety, to health, to shipboard living or to working conditions or to the marine environment, or incompatibility with Union maritime legislation, the Commission is empowered to adopt delegated acts in accordance with Article 10a, amending this Directive in order not to apply, for the purpose of this Directive, an amendment to the international instruments referred to in Article 2.

A delegated act amending this Directive in order not to apply, for the purposes of this Directive, any amendment to the international instruments in accordance with **this** Article shall be adopted at least three months before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment. In the period preceding the entry into force of such delegated act, Member States shall refrain from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.

(10) the following Article 10a is inserted:

"Article 10a

Exercise of delegation

1. The power to adopt delegated acts referred to in Articles 10(3) and 10(4) is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 10(3) and 10(4) shall be conferred on the Commission for a period of seven years from [OJ: insert the date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 10(3) and 10(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 10(3) or 10(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

~~7. A delegated act amending this Directive in order not to apply, for the purposes of this Directive, any amendment to the international instruments in accordance with Article 10(4) shall be adopted at least three months before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment. In the period preceding the entry into force of such delegated act, Member States shall refrain from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.";~~⁹

(11) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council* shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).";

(b) paragraph 3 is deleted;

⁹ *Moved to Article 10.*

(12) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Each passenger ship shall be subjected by the Administration of the flag State to the surveys specified in points (a), (b) and (c):

(a) an initial survey before the ship is put into service;

(b) a periodical survey once every 12 months; and

(c) additional surveys, as the occasion arises.";

(b) paragraph 2 is deleted;

(13) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. All new and existing passenger ships, fulfilling the requirements of this Directive, shall be provided with a Passenger Ship Safety Certificate in compliance with this Directive. The certificate shall have a format as laid down in Annex II. This certificate shall be issued by the Administration of the flag State after an initial survey, as described in point (a) of Article 12(1), has been carried out.";

(b) in paragraph 3, the third subparagraph is replaced by the following:

"Before issuing the Permit to Operate for high-speed passenger craft engaged on domestic voyages in a port State, the Administration of the flag State shall concur with the port State on any operational conditions associated with operation of the craft in that State. Any such conditions shall be shown by the Administration of the flag State on the Permit to Operate.";

(c) paragraph 4 is replaced by the following:

"4. Additional safety measures, equivalences and exemptions granted to ships or craft under and in accordance with the provisions of Articles 9(1), 9(2) and 9(3) shall be noted on the ship's or the craft's certificate.";

(14) Article 14 is deleted;

(15) the following Article 16a is inserted:

"Article 16a

Review

The Commission shall evaluate the implementation of this Directive and submit the results of the evaluation to the European Parliament and the Council no later than [seven years after the date referred to in the second subparagraph of Article 2(1)].";

(16) Annex I is amended as follows:

- (a) in paragraph 13.1 of Part A of Chapter II-2, the sixth sentence is replaced by the following:

"In the case the ship is engaged on domestic voyages in another Member State, a translation into the official language of that port State, if this language is neither English nor French, shall be included.";

- (b) in the first paragraph of footnote 1 to the table in paragraph 2 of Chapter III, the introductory phrase is replaced by the following:

"Survival craft may be lifeboats or life rafts or a combination of them in compliance with the provisions in Regulation III/2.2. When justified by the sheltered nature of the voyages and/or the favourable climatic conditions of the area of operation, having regard to the recommendations in IMO MSC/Circ.1046, the Administration of the flag State may accept, if this is not rejected by the port Member State:".

Article 2
Transposition

1. Member States shall adopt and publish, by [*insert: 24 months after the entry into force*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [*insert: 24 months after the entry into force*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

~~2a. By way of derogation from paragraph 1, a Member State shall not be obliged to transpose the Directive if there are no maritime ports in its territory and has no ships or craft flying its flag that fall within the scope of this Directive. Such a Member State may not allow ships or craft that fall within the scope of this Directive to fly its flag until it has transposed and implemented this Directive.~~

~~Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on [OJ: please insert date of transposition of this Directive]. Any subsequent change shall also be communicated to the Commission.~~

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
