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**PROPOSAL**

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 June 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 369 final
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

Delegations will find attached document COM(2016) 369 final.

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Encl.: COM(2016) 369 final



Brussels, 6.6.2016  
COM(2016) 369 final

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**

{SWD(2016) 189 final}  
{SWD(2016) 190 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1 Reasons for and objectives of the proposal**

In the spirit of the Commission's REFIT and Better Regulation agenda and as an immediate follow-up to the fitness check on EU passenger ship safety legislation<sup>1</sup>, the Commission puts forward a set of proposals to bring about the identified simplification potential.

The objectives of this revision are to simplify and streamline the existing EU passenger ship safety regulatory framework, in order to (i) maintain EU rules where necessary and proportionate; (ii) ensure their correct implementation; and (iii) eliminate potential overlap of obligations and inconsistencies between related pieces of legislation. An overarching objective is to provide for a clear, simple and up-to-date legal framework that is easier to implement, monitor and enforce, increasing thus the overall safety level.

Directive 2009/45/EC of the European Parliament and of the Council<sup>2</sup> was put in place to attain a high level of safety and to remove barriers to trade, by setting harmonised safety standards at an appropriate level for passenger ships and craft operating domestic services. This Directive incorporates at EU level for domestic voyages the provisions of the SOLAS Convention which establishes detailed technical requirements for vessel construction, stability, fire protection and life-saving equipment. Correspondingly, it applies to ships made of steel and equivalent material, and to high-speed craft. In addition, it includes specific access and public information requirements for persons with reduced mobility or disabilities.

Directive 2009/45/EC has brought about a common high safety level across the EU and important internal market benefits. On the other hand, the experience has shown that since the entry into force of its predecessor in 1998<sup>3</sup>, the implementation has given rise to a number of questions as regards the clarity and adequacy of some of its definitions, scope and procedures.

Furthermore, several key safety aspects for small ships below 24 meters in length have not been harmonised, reflecting the fact that these ships are more sensitive to local operational conditions. In addition, the Directive already gave Member States the flexibility to apply national rules when they find the harmonised standards for small ships impracticable and/or unreasonable. In this regard, the fitness check showed that the Directive currently applies only to 70 out of 1950 small ships, the key safety aspects of which have been already defined by Member States. As a result, such requirements should be re-evaluated.

Moreover, the fitness check revealed that several Member States certify aluminium ships under this Directive while few others do not. This creates an uneven situation that undermines the objective of achieving a common, high safety level for passengers sailing domestically in the EU Member States. It results from a different interpretation of the Directive's scope related to the definition of an 'equivalent material' and the applicability of the corresponding fire safety standards.

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<sup>1</sup> The results of which have been reported to the European Parliament and the Council on 16 October 2015 (COM(2015)508).

<sup>2</sup> 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).

<sup>3</sup> I.e. Directive 98/18/EC of which Directive 2009/45/EC is a recast.

It is therefore proposed to clarify and simplify the safety rules and standards for passenger ships so that they are, in line with the Commission's REFIT programme, easier to update, monitor and enforce. In view of increasing legal clarity and certainty, the proposal also removes a number of outdated, redundant and inconsistent legal references.

The proposal amends the corresponding definitions and requirements of Directive 2009/45/EC.

In addition, the proposal provides for the alignment of Directive 2009/45/EC with the changes brought about by the Treaty of Lisbon in regard of the powers of the Commission to adopt delegated and implementing acts.

## **1.2 Consistency with existing policy provisions in the policy area**

The proposal is fully consistent with the simplification proposals amending Council Directive 98/41/EC<sup>4</sup> and the proposal replacing Council Directive 1999/35/EC<sup>5</sup>. The proposal is fully in line with the fitness check recommendations and the 2011 White Paper for the future of transport<sup>6</sup> that recognised the need to modernise the current EU passenger ship safety legislative framework.

## **1.3 Consistency with other Union policies**

The proposal delivers on the Commission's Better Regulation agenda by ensuring that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political, societal and technological developments. It also delivers on the goals of the 2018 Maritime Transport Strategy<sup>7</sup> by ensuring quality ferry services in regular intra-EU passenger transport.

# **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

## **2.1 Legal basis**

Given that the proposal replaces the current Directive, the legal base remains Article 100(2) TFEU (ex Article 80(2) TEC), providing for measures in the field of sea transport.

## **2.2 Subsidiarity**

Directive 2009/45/EC has been mainly modelled and shaped on the international requirements and driven by a number of shipping casualties involving loss of human lives. Although common safety standard for ships engaged on international voyages have been set by international safety regulations such as SOLAS Convention, they do not apply to passenger ships engaged on domestic voyages.

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<sup>4</sup> Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35).

<sup>5</sup> Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1).

<sup>6</sup> White Paper 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM/2011/0144).

<sup>7</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategic goals and recommendations for the EU's maritime transport policy until 2018 (COM/2009/0008).

The proposal ensures that the common level of safety established by Directive 2009/45/EC for ships operating on domestic voyages within EU waters is preserved, which could not be achieved by unilateral action at the level of Member States. At the same time, the proposal reiterates the need for and added value of differences in standards where local operating conditions may so require.

In light of the internal market objective and the freedom to provide maritime transport services within Member States, the proposal also ensures that Directive 2009/45/EC continues to facilitate the transfer of ships between national registers and to allow for the competition on domestic voyages to take place on equal footing, without compromising the safety level.

### **2.3 Proportionality**

As evidenced by the accident statistics, the existing legislation has achieved a high level of passenger safety. The regulatory cost related to EU safety standards have not proved to be disproportionate in comparison to national standards that would have been needed otherwise. The estimated differences in regulatory costs represent merely a minor fraction compared to the total construction, operation and maintenance costs.

Besides clarifying a number of definitions, the removal of some unnecessary requirements without compromising the high level of safety is one of the objectives of this simplification initiative. As a result, the proposal removes ships below 24 metres in length from the scope of Directive 2009/45/EC. Given that small ships are built mainly from materials other than steel, the vast majority of this fleet is currently not covered by the harmonised EU safety standards (96%). This implies that most of vessels below 24 m are already certified under national legislation.

Furthermore, the wide range of services that these vessels are built for (e.g. daily or overnight passages, touristic daily cruising, calling to ports with specific constraints or infrastructures) produces a very broad range of designs and technical solutions. This makes identifying a common set of detailed rules fitting such a variety of services for smaller vessels extremely challenging.

The current regulatory approach of Directive 2009/45/EC consisting in prescriptive standards designed primarily for steel (or aluminium) ships was therefore re-evaluated for such ships. In addition, accidents recorded for small ships outside the scope of EU standards do not demonstrate any specific safety concern (5 fatalities over the last 4 years, all of them occupational accidents). Furthermore, unlike for bigger ships, small ships tend to be operated in the same Member State until the end of their operational life and their transfer between Member States is limited.

### **2.4 Choice of the instrument**

In accordance with the principle of proportionality, a Directive remains to be considered as the most suitable form for achieving the identified objectives. It establishes common principles and a harmonised safety level, ensures the enforcement of the rules, but leaves the choice of practical and technical procedures to be applied to each Member State.

The most adequate legal solution was found to be a proposal amending Directive 2009/45/EC. Alternative option of proposing a new Directive was discarded on the basis of the limited number of clearly identifiable changes to the current Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **3.1 Ex-post evaluations/fitness checks of existing legislation**

Fitness check showed that the key objectives of the EU passenger ship safety legislation related to passenger safety and internal market are being overall met and remain highly relevant. The EU passenger ship safety legal framework resulted in a common safety level for passenger ships within the EU and a level playing field between operators as well as increased transfer of ships between Member States. The fitness check also showed that there is scope for further enhancing the level of safety as well as the efficiency and proportionality of some of the regulatory requirements. Recommendations to simplify, clarify and repeal a number of ambiguous, outdated or overlapping requirements have been made in a number of areas:

- (a) Exclude passenger ships below 24 m in length from the scope of the Directive 2009/45/EC and consider developing guidelines or standards for small vessels and vessels built in non-steel or equivalent materials, based on functional requirements as part of a goal based standard framework.
- (b) Clarify the scope of the Directive, namely:
  - Clarify that for the purposes of Directive 2009/45/EC aluminium is a material equivalent to steel and clarify the corresponding fire insulation requirements (e.g. definitions of spaces which should be additionally fire insulated).
  - Clarify that offshore service vessel for wind-farms fall outside the scope of Directive 2009/45/EC.
  - Clarify that traditional ships fall outside the scope of Directive 2009/45/EC and clarify their definition.
- (c) Clarify and simplify the sea areas definition in Directive 2009/45/EC while:
  - Removing the reference to "where the shipwreck persons can land",
  - Removing the notion of "place of refuge".

#### **3.2 Stakeholder consultations**

Given the technical nature of the envisaged proposals, a targeted consultation has been chosen as the most adequate tool. National experts have been consulted in the framework of the Passenger Ship Safety Expert Group. A workshop was organised where the Member States as well as industry and passenger associations were invited to participate. The envisaged measures were presented on numerous occasions. In addition, the roadmap published on the Europa website<sup>8</sup> allowed all stakeholders to provide feedback by means of an online response form.

The consultation summary as well as detailed feedback on comments raised during the consultation process is provided in the Staff Working Document accompanying the proposal. The envisaged simplification measures were supported by the large majority of national

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<sup>8</sup> [http://ec.europa.eu/smart-regulation/roadmaps/index\\_en.htm](http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm).

experts, albeit a number of comments have been made with respect to exact wording of some of the proposals. All suggestions have been therefore carefully reviewed and proposals amended as appropriate. In addition, some experts raised questions concerning practical and technical implementation aspects, which have been addressed in the Staff Working Document accompanying the proposal and are embedded in the Implementation Plan.

Industrial stakeholders insisted that the key principles of the current legal framework remained unchanged (highlighting the costs of safety upgrade for aluminium ships in some Member States) while the passenger association called for upgrading the safety level and warned against its dilution. The proposal therefore ensures that the existing level of safety is maintained and, to the extent possible within the simplification framework, increased (e.g. by clarifying that aluminium ships should be built according to the Directive's safety standards).

### **3.3 Collection and use of expertise**

This review builds primarily on the data collected during the fitness check process as reported in the Commission Staff Working Document 'Adjusting course: EU Passenger Ship Safety Legislation Fitness Check', adopted on 16 October 2015<sup>9</sup>.

In addition to the data and consultation carried out in the framework of the fitness check, the preparation of this simplification proposal necessitated an input from technical and legal experts regarding the concrete formulation of technical definitions and a clear legal drafting. This expertise was gathered internally in cooperation with the European Maritime Safety Agency and the Passenger Ship Safety Expert Group. It is reported on in the Staff Working Document accompanying the proposal.

### **3.4 Impact assessment**

The proposal is an immediate follow-up to the fitness check that identified the issues for simplification in detail and assessed the simplification potential. As highlighted in the roadmap, the envisaged measures are either not expected to generate any significant impacts (i.e. beyond those that are non-measurable such as legal clarity, certainty or simplicity) or no materially different solutions have been identified. In line with the Commission's Better Regulation Guidelines, a fully-fledged impact assessment has not been carried out.

Nonetheless, the simplification proposal is accompanied by a Commission Staff Working Document that recalls the recommendations of the fitness check and explains the rationale of the proposed solutions from the technical as well as legal perspective. It includes a summary and a feedback on the stakeholder consultation carried out in support of this initiative. An implementation plan is also attached.

### **3.5 Regulatory fitness and simplification**

The simplification potential of this proposal primarily consists of non-measurable impacts such as legal clarity, certainty and simplicity, stemming from the clarification of the scope of the Directive and simpler definition of sea areas.

A deadline should be set for ships built in an equivalent material and greater than 24 m in length before the entry into force of this Directive to comply with the technical requirements

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<sup>9</sup> SWD(2015)197.

laid down in the Directive. Sufficient transition period should smooth the adjustment to the maximum extent possible. Concerning the sea areas, the proposal would primarily eliminate redundant or outdated criteria and influence the drawing of sea areas for Member States to the minimum extent only.

The proposal also increases legal clarity by eliminating a number of redundant, incorrect or inconsistent references.

### **3.6 Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

## **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the Union budget.

## **5. OTHER ELEMENTS**

### **5.1 Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal is accompanied by an implementation plan that lists the actions needed to implement the simplification measures and identifies the main technical, legal and time-related implementation challenges.

Adequate monitoring and reporting arrangements have been identified, without creating new reporting obligations and administrative burdens. The key information on fleet, accidents and compliance will be collected with the assistance of EMSA, Passenger Ship Safety Expert Group and on the basis of the European Marine Casualty Information Platform (EMCIP) database. Given that the full cycle of the envisaged EMSA implementation visits is estimated to last 5 years, the evaluation cycle of the EU passenger ship safety legislation should be set at 7 yearly intervals.

### **5.2 Explanatory documents**

Explanatory documents are not required as the simplification measures are not of substantial or complex nature.

### **5.3 Detailed explanation of the specific provisions of the proposal**

#### **Definitions and scope**

Article 2 is amended to eliminate a number of redundant, inconsistent or incorrect references, in particular related to the Intact Stability Code (missing reference added), High Speed Craft Code (reference corrected), bow height definition (redundant part deleted), port area (aligned with the definition of a sea area), place of refuge (removed as redundant in line with the simplification of sea area definitions), port State (replacing host State in line with the review of Directive 1999/35/EC), and recognised organisation (updated reference).



Article 2 is also amended to provide for new definitions of traditional ship (moved from Article 3 and updated to take into account definition of traditional ship in Directive 2002/59/EC of the European Parliament and of the Council<sup>10</sup>), sailing ship (new definition), pleasure yacht and craft (moved from Article 3 and further aligned with SOLAS), tender (new definition), and equivalent material (moved from Annex 1 and amended to clarify that ships built from such materials have to be certified according to this Directive).

Article 3 is amended to exclude ships below 24 metres from the scope of the Directive, to remove incorrect reference to 'passenger' from the heading of points (a) and (b), and to clarify that the Directive does not apply to sailing ships, tenders and ships referred to in the SPS code (including offshore supply vessels).

### **Classes of passenger ships and application**

Article 4 is amended to simplify the definitions of sea areas C and D (references to the criteria of 'where the shipwrecked persons can land' and 'distance to place of refuge' removed), and to clarify that the sea areas is established by Member States in such a manner that the inner border of sea area D is clearly delimited.

Article 5 is amended to update the reference to the host State (replaced by port State), and to update the reference to Directive 2009/16/EC of the European Parliament and of the Council<sup>11</sup> and Directive 2014/90/EC of the European Parliament and of the Council<sup>12</sup>.

### **Safety requirements**

Article 6 is amended to update the reference to Directive 2009/15/EC of the European Parliament and of the Council<sup>13</sup>, to remove the repetitive point (c), to update the reference to the host State (replaced by port State), to clarify that the conversion requirement is meant to apply to all ships (when converted in a passenger ships), not only to existing passenger ones (by transferring point (e) into a new paragraph 5), to remove redundant part of the DSC Code reference in the fourth subparagraph of paragraph 4(a), to remove outdated point (f), and to insert a new date of application for ships built in equivalent material before the entry into force of this Directive.

Articles 7 and 8 are amended to remove the outdated parts.

### **Additional safety requirements, equivalents, exemptions and safeguard measures**

Article 9 is amended to remove the incorrect reference to Annex 1 from paragraph 2 and to facilitate the notification of measures provided for in this Article by means of a database established for such purpose.

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<sup>10</sup> 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).

<sup>11</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

<sup>12</sup> 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).

<sup>13</sup> 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).

### **Committee and amendment procedure**

Articles 10 and 11 are brought in line with the Treaty on the Functioning of the European Union in regard to powers of the Commission to adopt delegated and implementing acts. Article 10a has been added for the same reason (exercise of delegation power).

### **Certificates**

Article 13 is amended to clarify that only ships fulfilling the requirements of this Directive are provided with a Passenger ship Safety Certificate, and to clarify that this certificate has to include all measures provided for under Article 9, not only the exemptions.

### **International dimension**

Article 14 is amended in order to be brought in line with Treaty on the Functioning of the European Union concerning external representation.

### **Evaluation provisions**

Article 16a has been added to specify the evaluation provisions.

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 Committee<sup>14</sup>,

Having regard to the opinion of the Committee of the Regions<sup>15</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) To maintain a high level of safety provided by common safety standards defined by Directive 2009/45/EC of the European Parliament and of the Council<sup>16</sup> and to preserve 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.
- (2) The Regulatory Fitness Programme (REFIT)<sup>17</sup> 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.

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<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C , , p. .

<sup>16</sup> 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).

<sup>17</sup> COM(2015)508.

- (3) In view of increasing legal clarity and consistency, 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 and level of safety provided by 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 Council<sup>18</sup>, 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 be therefore 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.
- (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.
- (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.
- (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.
- (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

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<sup>18</sup> 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).

in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>19</sup>.

- (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, updating the technical requirements and establishing conditions of use for the database kept by the Commission to host notifications by Member States of exemptions and requests for derogation in accordance with the present Directive. 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.
- (10) In order to establish a level playing field for passengers ships operating on voyages from and to Union ports, irrespective of the nature of the voyages they are engaged on, the Union action in view of expediting the ongoing work within the IMO to revise the regulations of the SOLAS Convention should be brought in line with the Treaty on the Functioning of the European Union.
- (11) In view of the full monitoring cycle of European Maritime Safety Agency 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.
- (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 amendments thereto, i.e. in their up-to-date versions:

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<sup>19</sup> 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).

- (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 and its Protocols;";
- (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;";
- (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 and 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\*;

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\* 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, disabled persons, 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 primarily 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 maintains structural and integrity properties equivalent to steel at the end of the applicable exposure to the standard fire test due to the insulation provided;

(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/craft' means a vessel carrying no cargo and not more than 12 passengers 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;

(zf) '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) ships which are:
  - (i) ships of war and troopships;
  - (ii) sailing ships and 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) ships referred in Regulation 1.2.3 of Chapter I of the Code of Safety for Special Purpose Ships, IMO Resolution MSC.266(84) of 13 May 2008, in its up-to-date version; or
  - (ix) tenders;
- (b) high-speed craft which are:
  - (i) craft of war and troopcraft;
  - (ii) pleasure craft;
  - (iii) craft exclusively engaged in port areas; or
  - (iv) craft referred in Regulation 1.2.3 of Chapter I of the Code of Safety for Special Purpose Ships, IMO Resolution MSC.266(84) of 13 May 2008, in its up-to-date version.";



(3) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

'Class A'	means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.
'Class B'	means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, corresponding to the medium tide height.
'Class C'	means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2,5 metres significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 5 miles from the line of coast, corresponding to the medium tide height.
'Class D'	means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1,5 metres significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 3 miles from the line of coast, corresponding to the medium tide height.

";

(b) in paragraph 2, point (a) is replaced by the following:

"(a) establish, and update when necessary, a list of sea areas under its jurisdiction, delimiting the inner border of the sea area in which ships of Class D may operate, zones for all-year-round operation and, where appropriate, restricted periodical operation of the classes of ships, using the criteria for classes set out in paragraph 1;"

(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 and Permit to Operate 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) paragraphs 3 and 4 are replaced by the following:

"3. A port State may inspect a passenger ship or a high-speed passenger craft, when engaged on domestic voyages, and audit its documentation, in accordance with the provisions of Directive 2009/16/EC of the European Parliament and of the Council\*.

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.

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

\*\* 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\*.

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\* 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;

- (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 and 6 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 [5 years after the date referred to in the second subparagraph of Article 2(1)].";

- (6) in Article 7, 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 fifth 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.

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 is empowered to adopt delegated acts in accordance with Article 10a concerning the conditions of access to this database.";
  - (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) and (q) of Article 2, point (a) of Article 3(2), point (b) of Article 6(1) and point (b) of Article 6(2).";

(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. The Commission is empowered to adopt delegated acts in accordance with Article 10a, amending this Directive in order to exclude from its scope any amendment to the international instruments referred to in Article 2 only if, on the basis of an evaluation by the Commission, there is a manifest risk that the international amendment will lower the standard of maritime safety, of prevention of pollution from ships or of protection of shipboard living and working conditions established by Union maritime legislation, or be incompatible with the latter.";

(10) the following Article 10a is inserted:

#### *"Article 10a*

#### **Exercise of delegation**

1. The power to adopt delegated acts referred to in Articles 9(4), 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 9(4), 10(3) and 10(4) shall be conferred on the Commission for an indeterminate period of time from [the date of entry into force].

3. The delegation of power referred to in Articles 9(4), 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 9(4), 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 excluding from the scope 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.";

(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.

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\* 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;

(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 replaced by the following:

*"Article 14*  
**1974 SOLAS Convention regulations**

1. With regard to passenger ships engaged on international voyages the Union shall submit proposals to the IMO to expedite the ongoing work within the IMO to revise the regulations of the 1974 SOLAS Convention, in its up-to-date version, containing issues left to the discretion of the Administration, to establish harmonised interpretations for those regulations and to adopt amendments to the latter accordingly.

2. The proposals referred to in paragraph 1 shall be made to the IMO on the basis of the harmonised regulations laid down in Annex I.";

- (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 [12 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 [12 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.

## *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*  
*The President*

*For the Council*  
*The President*