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PROPOSAL

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COMMISSION STAFF WORKING DOCUMENT

Simplification of EU Passenger Ship Safety Legislation

Accompanying the document

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

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and amending Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States

Proposal for a Directive of the European Parliament and of the Council on a system of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service and amending Directive 2009/16/EC of the European Parliament and of the Council on port State control and repealing Council Directive 1999/35/EC

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1. Context

Passenger ships play an important role in the mobility of EU citizens - more than 400 million people pass every year through EU ports, with 120 million passengers transported between ports of the same Member State.

The EU passenger ship safety legislation has been put in place over a period of 15 years mainly in response to accidents. It addresses several areas of maritime safety laying down (1) technical requirements for domestic passenger ships adapting and complementing where necessary international standards, (2) special requirements for ro-ro passenger ships (known as ro-pax ships), (3) surveys and (4) requirements for counting and registration of persons on board to avoid overcrowding and to facilitate search and rescue operations.

In 2009, the Legislator adopted the third maritime package that aimed to improve the effectiveness of the existing measures on maritime safety; however, it did not include measures on passenger ship safety. The 2011 White Paper for the future of transport[1] recognised the need to modernise the current EU passenger ship safety legislative framework.

This has led the Commission to undertake a fitness check of the complex regulatory set up of the EU passenger ship safety. The fitness check was announced in the Commission REFIT Communication of October 2013[2] and its results were reported to the European Parliament and the Council on 16 October 2015[3].

The three EU Directives that have been chosen for the fitness check and that are targeted in this review represent a set of key safety standards and requirements for passenger ships sailing in the EU waters, i.e. Directive 2009/45/EC[4], Directive 1999/35/EC[5] and Directive 98/41/EC[6]. Directive 2003/25/EC[7] was also part of the fitness check but it is not included in this review as a need for further action will be determined by the results of ongoing discussions at international level.

2. Background

The safety of passenger ships in the EU is regulated at three levels: international, EU and national. For ships engaged in international voyages (i.e. including between two EU Member States), international conventions and certain EU rules apply. The most safety-relevant

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

2 COM(2013)685.

3 COM(2015)508.

4 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).

5 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).

6 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).

7 Directive 2003/25/EC of the European Parliament and of the Council on specific stability requirements for ro-ro passenger ships (OJ L 123, 17.05.2003, p. 22).

applicable convention is the International Convention for the Safety of Life At Sea (SOLAS). In addition, specific EU rules apply to ro-pax ships and registration of persons on board.

For ships engaged in domestic voyages (i.e. between ports of the same Member State), EU and national rules apply. The most extensive EU legislative instrument is Directive 2009/45/EC, regulating ships made of steel or equivalent material and high speed craft. Where applicable and feasible, it is based on internationally agreed standards. National administrations have established their own rules for ships that are currently not regulated at EU level.

In addition, Directives 1999/35/EC and 98/41/EC provide for specific EU rules for inspections of vessels and for the registration of persons on board.

3. Fitness check results

Driven by the Commission's Regulatory Fitness and Performance (REFIT) Programme, 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. In addition to harmonised safety standards, the system of inspections and surveys played a key role in maintaining the required high level of safety.

The fitness check demonstrated that the majority of passengers travel on ships complying with common safety standards. Domestic passenger ships governed by EU safety standards account for around 30% in terms of number of vessels engaged in domestic traffic in EU waters, but more than 60% of total passenger capacity. As evidenced by the accident statistics, the existing legislation has achieved a high level of passenger safety. Out of the 408 accidents registered as involving domestic passenger ships during the last 4 years, only one has resulted in a fatality of a passenger. The corresponding risk per passenger hour is lower than for international passenger ships. The EU passenger ship safety legislation also facilitated the free movement of ships between EU Member States. The evidence demonstrates that the change of flag increased by 400% since 1998. The regulatory cost related to EU safety standards have not proved to be substantial 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.

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. The potential to simplify, clarify and repeal a number of ambiguous, outdated or overlapping requirements has been identified in a number of areas. In addition, the fitness check revealed a number of issues that unnecessarily reduce the effectiveness of search and rescue operations. Based on these results, a set of recommendations has been drawn concerning the simplification of EU passenger ship safety regulatory framework, support of search and rescue operations and further assessment of other safety-related issues.

4. Rationale

In the spirit of the Commission's REFIT and Better Regulation agenda and as an immediate follow-up of the fitness check, the Commission puts forward a set of proposals to bring about the identified simplification potential.

The objective of this revision is 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.

More specifically, this initiative aims at:

- *Reducing complexity and administrative burden, primarily stemming from overlapping inspection regimes;*
- *Reducing ambiguity of definitions and requirements, related in particular to the scope and application of the harmonised EU standards;*
- *Removing disproportionate requirements, particularly for small passenger ships; and*
- *Eliminating double reporting requirements and outdated provisions concerning registration of persons on board.*

The simplification potential of this review primarily consists of non-measurable impacts such as legal clarity, certainty and simplicity. The main quantifiable element relates to the removal of overlaps and inconsistencies between specific surveys under Directive 1999/35/EC, expanded port State control inspections provided for in Directive 2009/16/EC[8] and annual flag State surveys provided for in Directive 2009/21/EC[9] (concerning international voyages) and Directive 2009/45/EC (concerning domestic voyages).

The proposed simplification is envisaged not only to close the identified regulatory gap but is also expected to further rationalise the inspection effort of national administrations and maximise the time in which the ship is commercially exploited. The maximum combination potential has been estimated at ca. EUR 900.000 per year (i.e. reduction of ca. 670 self-standing surveys under this Directive per year for the entire EU, if the same ships continued in service as today), part of which has been already realised in practice by combining the various kind of inspections.

Besides these monetary estimates, there is a significant burden for all the stakeholders related to the complexity of these inspections, overlapping requirements spread across different

[8] 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).

[9] Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

pieces of legislation, expressed in different terms etc. This makes the implementation, monitoring and enforcement unnecessarily burdensome for all parties involved.

5. Data collection and stakeholder consultation

This review builds primarily on the data collected during the fitness check process as reported in the Commission Staff Working Document 'REFIT – Adjusting course: EU Passenger Ship Safety Legislation Fitness Check', adopted in 16 October 2015[10].

In addition to the data and consultation carried out in the framework of the REFIT 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.

Given the technical nature of the envisaged proposals, a targeted consultation has been chosen as the most adequate consultation tool. National experts have been consulted in the framework of the Passenger Ship Safety Expert Group and the results of this consultation are reported in Annex 1 and 2. In addition, a workshop was organised where all the Member States as well as industry and passenger associations were invited to participate (results reported in Annex 3).

The feedback on specific comments or concerns raised during the consultation process is provided in Chapter 6 according to the individual measures proposed. Where the Member States did not wish to be identified, their responses are referred to in an anonymous form (i.e. 'a MS'). Despite the overwhelming support of national experts for the simplification measures, a number of concerns or comments have been raised with respect to exact wording of some of the proposals. All suggestions have been therefore carefully reviewed and proposals amended as appropriate.

Industrial stakeholders insisted that the key principles of the current legal framework remained unchanged (on issues such as the self-declaration of passenger data) and warned the Commission that uniform application of some of the technical standards will necessitate safety upgrade in some sectors (particularly the aluminium fleet in France). The passenger association (represented by SOS Catastrophes) warned against dilution of the existing safety level.

In addition to this Staff Working Document, an implementation plan is also put forward that lists the actions needed to implement the simplification measures and identifies the main implementation challenges.

[10] SWD(2015)197.

6. Simplification proposals

The purpose of the following chapters is to recall the recommendations of the fitness check, to explain the rationale of the proposed solutions from the technical as well as legal perspective and to provide feedback on the comments raised during the consultation process.

Given the simplification nature of its initiative, no materially different policy options have been identified besides the baseline scenario described above, i.e. no EU action. The fitness check has identified the simplification potential in detail, leaving little or no discretion as to what and how should be simplified. It should be also noted that the fitness check identified a number of other, substantial issues going beyond simplification elements. These are not included in this review and necessitate further assessment and consultation with experts.

To some extent, an alternative instrument of addressing the identified simplification potential could be a non-legislative action such as interpretative guidelines or recommendations. Such instrument would however address only some of the identified issues (e.g. ambiguous definitions) and would lead to a situation where the requirements clearly identified as disproportionate, overly burdensome or outdated start to be legally enforced. Some stakeholders even pointed out that soft law would add another layer of documentation into the already complex legislative framework.

In view of the above and subject to a legal analysis, the proposals are therefore made in a form of amending proposals to Directives 2009/45/EC and 98/41/EC. Concerning Directive 1999/35/EC, in view of clear and consistent legal drafting the most adequate legal solution was found to be the proposal for a new Directive replacing the existing one. An alternative option of proposing a set of amendments to the current Directive was discarded as the changes required were significant in regard to the present format of the Directive.

For reasons of clarity and to maximise the information value, the proposed amendments are presented Directive by Directive in this Chapter. This Chapter is to be read in conjunction with the Explanatory Memorandum for each proposal as it complements the information provided therein. In addition, the accompanying implementation plan provides a list of support actions to facilitate the uptake of the simplified legal framework.

6.1. Directive 2009/45/EC

Directive 2009/45/EC on safety rules and standards for passenger ships establishes a legal framework laying down harmonised safety rules and standards for passenger ships made of steel and equivalent material and high-speed passenger craft engaged on domestic voyages. This Directive incorporates and adapts the provisions of the SOLAS convention establishing detailed technical requirements for vessel construction, stability, fire safety and life-saving appliances. In addition, it includes specific access and public information requirements for persons with reduced mobility or disabilities. The Directive distinguishes between four different classes of passenger ships depending upon their navigation areas, defined by significant wave heights, distance to a place of refuge and distance to coast.

Clarification of scope: Definitions

The fitness check revealed that a number of provisions, definitions and requirements are ambiguous to such extent that in certain cases they may hinder an effective implementation of the legislation. These relate in particular to the scope and application of the harmonised EU standards, i.e. the type of ships covered.

6.1.1. Offshore service vessels

In recent years, the development of offshore wind farms has created the need to transport workers by sea to these installations either for building them or for maintenance purposes. Most of these ships operate domestically. Some Member States are of the view that these workers cannot be considered ordinary passengers as they are required to pass mandatory safety trainings and/or mandatory medical fitness criteria, while some others consider them as passengers. This interpretation issue creates difficulties in the uniform implementation of the Directive.

At international level, the closest personnel category would be “special personnel” defined in the IMO Code for Special Purpose Ships (SPS Code). However, in its definition it is indicated that a person is to be special personnel if working on-board, e.g. scientists in a laboratory. In addition, Chapter I Regulation 1.2.3 of the SPS Code indicates that “The Code is not intended for ships used to transport and accommodate industrial personnel that are not working on board.” To close this gap, the IMO is currently working on a Code for ships transporting industrial personnel and trying to define an appropriate personnel category.

In the questionnaire sent in 2014, 10 Member States indicated that vessels operating domestically and carrying more than 12 non-crew people on-board (i.e. offshore workers) to offshore installations like wind farms were considered as passenger ships under the Directive whereas 9 Member States defined those workers as 'special personnel' and apply to them the IMO Code for Special Purpose Ships (SPS Code), demonstrating a non-uniform implementation of the Directive.

Furthermore, considering that the Directive's standards were developed for passengers and not for ships transporting trained personnel employed or engaged in business of offshore installations, this type of ships therefore should not be certified under the Directive. In view of the fitness check recommendations, it is therefore proposed to clarify in Article 3(2) that Directive 2009/45/EC does not apply to

- *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, as amended.*

With this definition, Directive 2009/45/EC will not apply to ships intended to transport or accommodate industrial personnel that are not working on board.

Although it was originally foreseen to define specifically offshore service vessels as falling outside the Directive's scope, during the consultation several Member States highlighted that applying the definition of the IMO OSV guidelines may be problematic and suggested to focus on the SPS Code (DK, FR, ES, PL, UK). An amended Directive should therefore make reference to the provisions of the SPS Code which exclude the ships transporting industrial personnel that are not working on board from the application of such requirements.

Importantly, this proposal avoids inconsistencies with the international legal framework where the definition of industrial personnel is still being discussed. Currently, only two offshore service vessels have been reported as certified under the Directive by DK and would need to be re-certified accordingly.

6.1.2. Tenders

Ship-carried tenders are used to ferry passengers from passenger ships (primarily cruise ships) to shore and back. As cruise ships have increased in size, so the capacity of the tenders has also increased; in some cases to over 300 passengers. The fitness check revealed a lack of clarity as to whether such vessels should be considered passenger ships in their own right or simply equipment on board a cruise ship.

In principle, tender operation is regulated by the flag State of the cruise vessel or by the state in which they operate – unless they operate in the sea areas defined in Article 4 and are made of steel or equivalent material in which case the Directive would apply. Nonetheless, the application of the Directive in such instances could be expected to have limited, if not deterring effect. Furthermore, the IMO has developed and adopted non-mandatory guidelines for the construction, outfitting and use of tenders to provide a common standard for their use (MSC.1/Circ.1417 on Guidelines for passenger ship tenders).

These guidelines clearly indicate that ship-carried tenders should not be used for other types of services such as coastal sightseeing excursions, which should be undertaken by ships that meet the requirements for passenger ships of the coastal State. It is therefore proposed to clarify that tenders are excluded from the scope of Directive 2009/45/EC and, based on the above mentioned IMO guidelines, define:

- *Tenders as ship-carried boats used for transferring more than 12 passengers from a stationary passenger ship to shore and back.*

It was originally envisaged to refer the IMO guidelines in full, i.e. including the type of certificate that such tender could carry (i.e. certified either as lifeboats or passenger ships of like size and service to the tender). In the consultation, FR and NL questioned the need to include such certification in the definition of tenders, which was accepted. On the other hand, the suggestion of one MS to include a maximum distance from the coast that the tender can operate was not taken up given that such provision would increase the complexity of the legislation in an arbitrary manner. NO did not see the need for the definition to include a reference to passenger ships. As already raised during the fitness check, IE opposed the proposed clarification altogether. No tender has been reported as being certified under the Directive.

6.1.3. Traditional and sailing ships

In Article 3(2a)v (i.e. ships outside its scope), Directive 2009/45/EC excludes 'original, and individual replicas of, historical passenger ships designed before 1965, build predominantly with the original materials'. This group of ships could be categorised as 'traditional ships'. On the other hand, Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system[11] includes a definition of traditional ships as 'all kinds of historical ships and their replicas 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'.

For the sake of consistency and legal clarity, it is proposed to align these two definitions, i.e. to align the definition of traditional ships in Directive 2009/45/EC with the corresponding definition in Directive 2002/59/EC. In view of the fitness check recommendations, it is therefore proposed to clarify that Directive 2009/45/EC does not apply to:

- *Traditional ships, defined as all kinds of historical passenger ships 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.*

In the consultation, Member States had slight preference for this wording that retains the age and material criteria. To avoid any unintended impacts on the scope of the Directive, this option is therefore put forward. For example, in the absence of the material criteria, ships built from modern materials (albeit operated according to traditional principles of seamanship and technique) would be also excluded from the scope of the Directive – which is not the intention of the proposed clarification (as pointed out by DK).

[11] 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).

The inclusion in the definition of the traditional seamanship skills and principles recognize the specific characteristics of ships which are considered as cultural heritage that do meet some special minimum safety standards but that have not been designed to meet the international conventions; such ships should be used to promote traditional skills, seamanship and awareness of the maritime heritage.

In addition, the practice has shown a need to clarify the coverage of rig-sailing passenger ships. Although the Directive explicitly excludes passenger ships not propelled by mechanical means from its scope (Article 3(2a)ii), these ships usually have an auxiliary diesel engine capable of propelling the ship if needed. In reality, a number of relatively old rig-sailing passenger ships had been certified according to the Directive as existing Class C and D fulfilling relevant national requirements instead of Chapters II-1 and II-2 of the Directive. Currently, the Directive and SOLAS lack any specific stability requirements related to these ships when using wind and sails as the main propulsion power. This type of ships should therefore not be certified under the Directive. In view of the fitness check recommendations, it is therefore proposed to clarify that Directive 2009/45/EC does not apply to:

- *Sailing ships, defined as ships primarily propelled by sails even if fitted with mechanical propulsion for auxiliary and emergency purpose.*

In the consultation, UK proposed this slightly amended wording which has been accepted. On the other hand, the suggestion of IT, PT and one MS to include, in addition, a maximum propulsion power has not be taken up, given that no need has been identified for such (to some extent arbitrary) criterion. DE, DK and IE disagreed with this clarification altogether, which is driven by a different interpretation of the Directive's scope. Instead, DK suggested defining a common stability requirements for ships equipped with sails, which has been discarded as falling outside the remit of this simplification review and the carried out fitness check.

The proposed clarification would mean that the existing 45-50 rig-sailing ships (primarily under NL flag) certified under the Directive will have to be certified according to the national applicable standards.

6.1.4. Pleasure yachts/crafts

In Articles 3(2a)vi and 3(2b)ii (i.e. ships outside its scope), Directive 2009/45/EC refers to pleasure 'yachts' and pleasure 'craft'. However, it is not entirely clear what these terms stand for as neither of them is defined in the Directive. It is therefore proposed to define that for the purposes of Directive 2009/45/EC:

- *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.*

The alternative definition of pleasure yacht and craft considered included also the purpose for which such yachts/craft are used, i.e. intended for sports and leisure purposes. Although such definition was more aligned with the Recreational Craft Directive (albeit maintaining the SOLAS reference to 'pleasure' yachts), during the consultation IT raised concerns about the

unintended consequences of defining the purpose for which these vessels are used. This was accepted.

In addition, the amended wording specifies that such ships shall carry no cargo and replaces the reference 'for commercial purposes' by 'not engaged in trade' to align it with the SOLAS definition. In case such vessel is not propelled by mechanical means and carrying over 12 passengers, it would still be exempted from the Directive (as commented on by IE).

6.1.5. Equivalent material/aluminium

According to Article 3, Directive 2009/45/EC does not apply to 'vessels constructed in material other than steel or equivalent'. Although the main body of the Directive does not define what such 'equivalency' stands for, in Chapter II-2 of Annex I, the Directive defines requirements for cases 'where any part of the structure is of aluminium alloy, the following shall apply'. Aluminium is therefore the only material that is explicitly mentioned in the Directive as being equivalent to steel. Furthermore, given that the Directive provides for mandatory requirements for ship structures built of aluminium, it is considered that such requirements shall be implemented and enforced in all such cases.

While the large majority of Member States considers ships made of aluminium equivalent to steel and consequently within the scope of Directive, other Member States do not apply the Directive in the same manner. This leads to an uneven situation where one part of the fleet is certified under the Directive while another part of the same fleet is not (albeit a bigger one). Around 25 aluminium built non-HSC passenger ships above 24 m in length have been certified according to the Directive, while another ca. 130 have not.[12] Therefore, clarifying that aluminium built ships fall under the scope of Directive 2009/45/EC and enforcing its provisions is indispensable to establish a common safety level and a level playing field.

Table 1: Aluminium built ships certified and non-certified under the Directive

Aluminium, >24m, non-HSC	**Under Directive 2009/45/EC**	**Outside Directive 2009/45/EC**
Denmark	1	
Spain	5	
Ireland	3	
Italy	5	41
Sweden	8	
UK	3	
France		86 (out of which ca. 60 are in parts of France to which the Treaty provisions apply)
Greece		1
Total	**25**	**128**

[12] These ships are certified according to national standards. Comparison of these standards can be found in the Commission Staff Working Document 'REFIT - Adjusting course: EU Passenger Ship Safety Legislation Fitness Check', adopted in 16 October 2015 (SWD(2015)197).

Source: MS 2014/09 FC Questionnaire + MARINFO (EMSA)

During the consultation, 15 Member States and Norway agreed that the intention of the Legislator was to apply Directive's standards to aluminium built ships (and one Member State had no opinion). Three Member States disagreed (FR, IT and LV). FR argued that aluminium passenger ships that are not insulated according to the Directive's requirements should be excluded from its scope and opposed to include new aluminium ships in the scope of the Directive before suitable technical requirements have been defined first. IT pointed out that there is certain ambiguity as regards some of the technical requirements in the Annex of the Directive and LV proposed an alternative wording ('achieves' instead of 'can achieve').

It has been acknowledged that the definition of 'equivalency' in Chapter II-2 of Annex I may create ambiguity as regards the coverage of non-insulated (or not sufficiently insulated) aluminium built ships and that there are provisions in the Directive (mirroring SOLAS) that require certain elements to be built in steel, notably crowns and casings, without indicating the equivalent material possibility.

It is therefore proposed to amend the definition of equivalency to clarify that aluminium built passenger ships fall in the scope of the Directive and have to be insulated accordingly:

- *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.*

Furthermore, with the assistance of EMSA and national experts, it is envisaged to review the Annex of the Directive and address specific concerns and clarifications related to the applicability of technical standards to aluminium ships raised by some Member States during the consultation, such as:

- *Crowns and casings (IT);*
- *Vehicle decks made of aluminium (UK);*
- *Complete insulation of the hull, superstructures, structural bulkheads, decks and deckhouses (FR);*
- *Watertight bulkheads in an aluminium passenger ship. Ch. II-1, table 4.1 and 4.2 drafted on the basis that the ship is constructed in steel. A-0 appears in numerous divisions and for aluminium divisions this requires SFP to be provided to a minimum of A-30 standard (IE);*
- *Empty spaces should be excluded from the requirement (SE);*
- *Stairways and ladders in machinery spaces.*

These clarifications need to be seen and assessed in combination with the exclusion of small ships below 24 meters in length from the scope of the Directive (see chapter 6.1.8.). However, even with clarifying the corresponding fire insulation requirements, this proposal may imply

the need to upgrade some fire safety elements in cases where the national standards are currently less stringent.[13]

For the newly built ships, it is envisaged that the additional cost of fire insulation for aluminium built ships would be marginal in comparison to the cost of a new built vessels. The situation is different for the existing fleet. During the consultation, FR alerted the Commission that the upgrade of existing aluminium vessels to the Directive's requirements is economically and technically impossible. Industrial stakeholders (European Boating Industry, ECSA), while also arguing against retro-fitting, pointed out to side effects of additional insulation such as higher weight, fuel consumption etc.

In general terms, the costs of retro-fitting will vary on a case by case basis and will be determined by the residual value of the ship in the moment of retro-fitting. The exclusion from the scope of the Directive of ships below 24 m will reduce significantly the number of ships which may need to be retrofitted. Furthermore, during the phase-in period some of these vessels are likely to be phased out because of their normal life cycle. In any case, sufficient transition period will have to be envisaged to smooth the adjustment to the maximum extent possible and to plan the technical updates, if any. The longer the transition period, the higher likelihood that the existing ships (not certified under the Directive) are not impacted. On the other hand, it also takes longer to achieve a common safety level.

Finally, it should be also noted that excluding aluminium from the scope of Directive 2009/45/EC is not considered a credible alternative, as it would defeat the entire notion of material equivalence described above and the policy objective of achieving a common, high safety level for passengers sailing domestically in the EU Member States.

Simplification

The fitness check showed that the complexity of the EU passenger ship safety legislation is aggravated by a number of elements that render its monitoring, implementation and enforcement unnecessarily difficult. This includes the complex definition of sea areas (especially for Classes C and D) and low speed and transparency of the notification procedure.

6.1.6. Sea areas definition and reporting

In Article 4, passenger ships are divided into 4 classes according to the sea area in which they operate. The definitions of the sea areas C and D are based on three different parameters of the sea areas where they can operate, namely the significant wave height, distance to coast where shipwrecked persons can land and distance to a place of refuge. All these parameters mean that the definition of the sea areas is rather complex, especially for Classes C and D. Member States have to calculate the significant wave height for each sea area, then cross

[13] For example, the French national rules include fire-insulation requirements in similar areas as the Directive, such as the bulkheads of the engine room, but with less stringent requirements (e.g. A-30 vs A-60 in the Directive).

check with the maximum allowed distance to coast where shipwrecked persons can land and finally cross-check again with the distance to a place of refuge.

The fitness check has demonstrated that the large majority of Member States implement and define sea areas on the basis of solely two parameters, namely the distance to coast and the significant wave height. Taking into account the objectives of this simplification initiative and comments of Member States, the proposed simplification of sea areas definitions is limited to the elements that would not significantly influence the current delimitation of sea areas.

First, the approach and requirements with respect to place of refuge as defined in Directive 2002/59/EC (i.e. for the purpose of any ship in a need of assistance) better fits the purpose of providing for the place of refuge as it is ship-dependant and weather-dependant. Member States should have already procedures in place to assess the appropriateness of a particular coastline as a place of refuge on a case by case basis. In such framework, the notion of place of refuge as a static, defining parameter of sea areas was found outdated and inadequate. The results of the questionnaire of 2014 also showed that the majority of Member States do not use distance to a place of refuge to define their sea areas.

Second, the Directive does not include any criteria that would indicate which type of coast is appropriate for 'shipwrecked person to land' or even whether a shipwrecked person is referred to a person in the water, on a survival craft or on a ship in distress. In fact, this notion was not found to be used in practice for defining the sea areas.

In view of the fitness check recommendations, it is therefore proposed, for the purposes of defining sea areas in Article 4 of Directive 2009/45/EC, to:

- *Remove the reference to where the shipwrecked persons can land; and*
- *Remove the reference to the place of refuge.*

During the consultation, albeit the UK in principle disagreed with removing the notion of 'place of refuge' from the definition of sea areas, they agreed with the rationale for its removal, i.e. that it depends on the individual vessel and its route. Similarly for SE that questioned whether the notion of the place of refuge is to be replaced by another definition. It needs to be therefore clarified that the operational considerations in view of the local conditions and the availability of appropriate place of refuge for the given ship type and route remain a discretion of Member States.

PT and NL provided additional comments regarding the need to re-classify sea areas in case the criterion of place of refuge is removed. As regards the concerns of PL and DE, it should be clarified that the distance to coast remains as a key defining parameter (besides the significant wave height). One Member State noted that an alternative to sea areas should be provided for cases where sea areas cannot be determined due to the complexity of the procedure.

In addition, to complete the common sea area maps and to clarify where the sea areas defined for the purpose of the Directive end, it is proposed to specify that Member States, when defining the list of sea areas, should delimit the inner border of sea area D:

- *Establish, and update when necessary, a list of sea areas under its jurisdiction, delimiting the inner border of sea area D.*

6.1.7. Notification procedure of exemptions, equivalencies and additional measures

Directive 2009/45/EC (and in principle also Directive 98/41/EC) defines a sui generis notification procedure that is rather lengthy and not necessarily always followed in practice. For example, although Member States are expected to notify draft measures, exemptions are often notified after they had been granted. There is no database where such measures (either in their draft or adopted form) would be recorded and made available to all Member States and operators for their consideration.

During the fitness check, the proposal has been made to align the specific notification procedures with those found in Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services[14] (that replaced and repealed Directive 98/34/EC) which provides for a notification procedure of technical regulations related to products and information society services. However, the complete alignment of the two procedures has not proven to be feasible in practice, given that Directive (EU) 2015/1535 neither allows for the Commission decision in case the proposed measures are not justified (which preserves a common implementation and level playing field for economic operators throughout the EU), nor allows Member States to adopt the measure in course of the so called 'standstill' period.

Nonetheless, on the basis of the lessons learnt with the database supporting Directive (EU) 2015/1535 (the so called TRIS database) and in order to streamline, facilitate and maximise the added value of existing reporting requirements, it should be possible to set up and maintain a database containing the notifications, additional information, Commission decisions and the final adopted measures. Besides increasing transparency, such database would also allow for an immediate access to the documents by the Commission, EMSA and other Member States, hence eliminating unnecessary delays related to their submission and circulation.

An existing platform that could for example perform a function of such database is CIRCA, the use of which would allow avoiding additional administrative costs for Member States as well as the Commission as the database manager. The decision will however need to be taken as regards the accessibility of the notified information. In view of the fitness check recommendations, it is therefore proposed to:

- *Specify that the draft or adopted measures regarding exemptions, equivalencies or additional safety requirements shall be notified by means of a database established and maintained by the Commission for such purpose; and*

[14] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- *Specify that conditions of access to the database shall be defined by means of a delegated act.*

In the consultation, all Member States and Norway agreed with the proposed simplification of the notification procedure, with the exception of MT, who underlined the possibility of additional administrative burden (which would not be the case, as explained above). Three Member States expressed no opinion. In the comments, national experts specifically highlighted the higher transparency of the proposed measures and easier updates and access. DK highlighted that the same principles as the IMO GISIS should be used (to be defined by means of a delegated act).

Improve proportionality

The limit between small and large ships is set at 24 m in length. This threshold is based on the IMO International Convention on Load Lines (ICLL) and remains considered the most appropriate in defining commonly applicable technical safety standards for passenger ships[15]. The largest ships are certified according to the Directive: 92% of the 922 passenger ships covered at present by Directive are ships of > 24m length. The maximum length of the ships above 24m for the ships certified out of the Directive is around 40 meters.

Table 2: Size of ships

	No. Ships >=24m	**No. ships <24m**	**% Ships >=24m**	**% Ships <24m**
EU Dir. Certified	850	72	92%	8%
Aluminium[16]	129	280	32%	68%
Composite	105	589	15%	85%
Wood	136	1014	12%	88%
Sub-total of ships out of Directive (Al, Comp & Wood)	370	1883	16%	84%

Source: MS 2014/09 FC Questionnaire

[15] With the exception of France that during the fitness check and the targeted consultation for this proposal suggested replacing the limit of length with the limit applicable to cargo vessels, i.e. gross tonnage (namely 500 GT).

[16] Includes the ships operating in French Overseas Territories (New Caledonia etc.).

6.1.8. Ships below 24 m outside scope

Currently, only ships built in steel or equivalent material below 24 m are within the scope of the Directive, however a large majority of such ships is built in other materials than steel (wood and composite material). This reflects the fact that these ships are more sensitive to local operational conditions. Member States are therefore in a better position to assess the limitations of navigation for these ships in terms of distance to coast or port and weather conditions. Furthermore, it has proven increasingly difficult to adapt the prescriptive, one-size-fits all SOLAS standards for this category of ships at EU level.

The Directive also gives Member States the flexibility to apply national rules when they find the harmonised standards for small ships impracticable and/or unreasonable. For example, while one Member State may conclude that a double bottom is necessary, another one may conclude the contrary. This will depend on the type of service that the ship is going to provide, in which area and in which time of the year. Member States must therefore develop and maintain a number of regulations related to ships of less than 24m. This situation does not only create a double layer of legislation for these ships, it also puts into question the need for, and value added of, keeping the ships below 24 m in length within the scope of the Directive.

Furthermore, the fitness check showed that out of the ships with less than 24m within the scope of the Directive, only one had changed flag. This means that this category of ships tends to be currently operated in the same Member State until the end of their operational life.

The fitness check has identified a mismatch between the existing prescriptive safety standards for small steel (or aluminium) ships of below 24 m in length and the identified safety and internal market objectives. Given that such small ships are in the main built from materials other than steel, the vast majority of the fleet in terms of numbers of ships is currently not covered by the harmonised EU safety standards. On this basis, the EU standards for small ships (currently applied to ca. 70 ships out of 1950 small ships) have been evaluated as disproportionate.

It is therefore proposed to exclude passenger ships below 24 m in length from the scope of Directive 2009/45/EC so it applies to:

- *New and existing passenger ships of 24 meters in length and above.*

The benefits of this measure primarily relate to a simpler, clearer and more proportionate EU regulatory framework. Given the limited number of small ships currently covered by the Directive, the impacts on public authorities and operators are expected to be marginal. Re-certification under national legislation for the ca. 70 small ships certified under Directive 2009/45/EC would apply.

In the consultation, the large majority of Member States and Norway agreed to exclude small ships from the scope of the Directive (16 Member States). DE, IE and IT disagreed, albeit IE commented that ships would not meet the requirements of their existing legislation (however,

small ships will anyhow have to be certified under national applicable legislation) and IT noted that they would prefer a dedicated Directive regulating the small ships (i.e. irrespectively of the material they are built from).

Increase legal clarity

The review also includes a number of proposals removing outdated, inconsistent or redundant references from the Directive.

6.1.9. Outdated and redundant references

- *Reference to Directive 96/98/EC replaced by a reference to Directive 2014/90/EC;*
- *Reference to Directive 95/21/EC replaced by a reference to Directive 2009/16/EC;*
- *Reference to Directive 94/57/EC replaced by a reference to Regulation (EC) 391/2009;*
- *Reference to Decision 1999/468/EC replaced by a reference to Regulation (EU) 182/2011 where appropriate;*
- *Outdated Article 7(2) on ro-pax phased-out (1 October 2015) removed;*
- *Outdated Article 8(4)(second paragraph) and Article 8(4) on implementation reports (17 May 2006) removed;*
- *Redundant part of the reference to ICLL taken out in Article 2(m);*
- *Redundant Article 6(1)(c) is deleted {duplicates points (a) and (b)};*
- *Redundant part of the reference to DSC Code taken out in Article 6(4)(a).*

6.1.10. Inconsistent and incorrect provisions

- *Missing reference to the 2008 Intact Stability Code added in Article 2(b);*
- *Incorrect reference to HSC Code in Article 2 (g)(ii) replaced by a correct one (Regulation 1.4.38);*
- *Incorrect reference to 'passenger' taken out from Article 3(2)(a);*
- *Incorrect reference to Annex I took out from Article 9(2);*
- *Explicit reference to the requirements of the Directive added in Article 13(a);*
- *Missing references to equivalencies and additional safety provisions added in Article 13(b).*

6.1.11. Correction of unintended consequences

As pointed out by the UK during the consultation process, Article 6(3)(e) should be read in the context of all existing passenger ships, not only to the passenger ones as the heading of paragraph 3 currently suggests. This may lead to unintended negative consequences whereby converted cargo ships are not considered as new passenger ships (which was certainly not the intention of the Legislator). In addition, although the main text of the Directive refers to repairs, alterations and modifications of major character, the corresponding definition appears only in the Annex. It is therefore proposed to:

- *Remove point (e) from paragraph 3 of Article 6 and re-introduce it as a new paragraph 5 of Article 6 under the heading of existing ships; and*
- *Move the definition of repairs from the Annex (Ch.I.9) to the main text of the Directive (Article 2, definitions).*

6.2. Directive 1999/35/EC

Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services foresees rules for safe operation of ro-ro ferries and HSC services to or from of EU ports. It also provides the Member States with a right to conduct, participate in or cooperate with any investigation of maritime casualties or incidents involving these vessels (which is no longer relevant as it is specifically covered by Directive 2009/18/EC on maritime accident investigation[17]).

Removing overlaps and closing regulatory gap

Notwithstanding the specificities of Directive 1999/35/EC, the vast majority of Member States combine or replace some of the inspections required under the Directive with either flag State surveys or port State control inspections. This practice renders the implementation and enforcement of this Directive problematic, given the different scope of these inspections and regulatory overlaps. For example, the legal framework allows for a port State control inspection to be replaced by a Directive 1999/35/EC survey. However, given that the scope of 1999/35/EC survey does not include all elements covered by the port State control, this overlap can in fact create a regulatory gap.

In view of the identified potential to remove overlaps and inconsistencies between the surveys under Directive 1999/35/EC ('ro-pax' and HSC surveys), port State control inspections (under Directive 2009/16/EC) and the flag State surveys (under Directive 2009/45/EC), it is proposed to further rationalise the inspection effort of national administrations, to focus the inspection effort on the ships being inspected rather than on the Member States and to thereby maximise the time in which the ship can be commercially exploited.

6.2.1. Vessels outside the scope of port State control

Vessels not subject to port State control include ships trading domestically in the flag State and ships trading between the flag State and a State outside the EU. These two groups are covered by Directive 2009/21/EC and Directive 1999/35/EC (ships of Class A only) and are outside the scope of Directive 2009/16/EC because the flag State of the ship is the same as the port State. Together, these vessels account for ca. 40% of the fleet falling under Directive 1999/35/EC.

In order to reduce the overlaps identified in the fitness check (primarily between the 'in port' and annual flag survey), it was originally foreseen to transfer the requirements provided in Directive 1999/35/EC to Directive 2009/45/EC (this would concern ca. 30% of vessels which fall in the scope of Directive 1999/35/EC). Similarly for vessels operating between an EU MS

[17] Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114). This Directive deletes Article 12 of Directive 1999/35/EC on accident investigation.

and a third country where the flag of the vessel is the same as that of the MS, it has been considered to transfer such requirements to Directive 2009/21/EC.

Such transfers (in combination with the measure below) would allow the repeal of Directive 1999/35/EC. However, in order to preserve the current safety level, a large amount of provisions would have to be transferred and duplicated (as for example noted in the consultation by IE). In view of clear and simple legal drafting, this was ultimately considered undesirable, particularly in view of the limited simplification potential to be obtained. Therefore, it is proposed to:

- *Retain requirements for the vessels falling outside the scope of port State control in a specific, single Directive dedicated to inspections of ro-ro ferry and high-speed craft in regular service; and*
- *Replace Directive 1999/35/EC with a new Directive.*

Given that the amendments in the wording and editing of the current Directive are numerous (although they do not change its substantial provisions), replacement with a new Directive was found to be the only viable solution from a perspective of legal clarity and coherence.

In the consultation, 13 MS and Norway agreed with the suggestion to transfer the corresponding requirements from Directive 1999/35/EC to Directive 2009/45/EC but only 8 MS agreed to do so for Directive 2009/21/EC. With respect to vessels operating domestically, DK and PL noted that the flexibility (simplification potential) in carrying out annual Flag survey and specific ro-pax survey is limited in those Member States that delegate their annual Flag survey to a recognised organisation (which is not possible under Directive 1999/35/EC).

As concluded in the fitness check, the combination of the above mentioned surveys observed in practice has nonetheless proved to be beneficial also in case where MS delegated their annual flag surveys to a recognised organisation – in such case primarily for the ship operator. For example, as Finland noted during the fitness check consultation: *"We try to combine these surveys together with the flag State / Recognised Organisation surveys. We do not wish to cause too excessive workload to the ship's crew due to inspections."* From the operator perspective, the combination of inspections reduces the non-productive time for the ship, whereby the ship does not have to stop operations, prepare for and undergo 2 different inspections. On average, this would reduce the inspection burden from the ship perspective from 3 to 2 inspections per year.

The simplification potential for the vessels outside the scope of port State control that could be thereby reaped was estimated in the fitness check at 150 self-standing ro-pax inspections per year on the basis of 2014 data.[18] This means that in principle, ship operators would be subject every year (all things being equal) to 150 inspections less compared to status quo (see estimate in Table 3 for Group 2 and 3 vessels).

[18] For more details, see SWD (2015)197.

Table 3: Example of inspections – year 2014

Ships	No of ships	2014 surveys			Max (none combined)	Min (99/35 and FS combined)	Difference
		99/35	Expanded PSC	FS			
Group 2 and 3	150	215	n.a.	150	365	215	150

Source: EMSA on the basis of the THETIS database, Commission, 2015

This is nonetheless only an illustration of the maximum synergies that could be possible to reach and which would be lower in practice given that the combination of two surveys is unlikely to completely eliminate the cost of one of them (this will depend on a case by case, i.e. how exactly the surveys are combined, who carries them out etc.).

In view of maximising the above illustrated simplification potential to the extent possible and without duplicating the current requirements in other legal acts (i.e. Directive 2009/45/EC and 2009/16/EC), it is therefore proposed to:

- *Clarify that the specific ro-pax inspection may, at the discretion of the Member State, be carried out at the same time as or in conjunction with the annual flag State survey*[19].

6.2.2. For vessels subject to port State control

These ships are subject to port State control in accordance with Directive 2009/16/EC, flag State control and Directive 1999/35/EC inspection regimes. These vessels account for ca. 60% of the fleet falling under Directive 1999/35/EC.

Unlike the flag State survey, port State control has to be carried out by the administration itself and cannot be delegated to a recognised organisation. From a perspective of national administrations, the duplication (and consequently the simplification potential) between the specific ro-pax survey and port State control is therefore the biggest.

In order to prevent unnecessary burden and to avoid overlap, Directive 1999/35/EC provides that ro-pax vessels and HSC inspected under this regime should be exempted from expanded PSC inspections. Although this provision implies that a Directive 1999/35/EC inspection is equivalent to a PSC expanded inspection, this is not the case as there is no legal basis in Directive 1999/35/EC to inspect a ship for compliance with all international Conventions.

[19] Carried out according to the IMO HSSC Guidelines or procedures designed to achieve the same goal.

This leads to a paradox where the overlap of the two existing inspection regimes can in fact create a regulatory gap[20].
Furthermore, despite the overlaps between these two instruments, the current legal framework leads to situations where the combination of inspections is not always possible. This is mainly because the risk parameters in the current PSC system can imply that the ship is not eligible for an expanded PSC inspection at the time when the Directive 1999/35/EC inspection is scheduled. According to feedback received during the fitness check consultation, DE, EL, FI, IE, IT, LV carry out ro-pax and PSC inspections at the same time while DK, MT, PL, UK replace PSC with ro-pax surveys[21].

In view of removing the inconsistencies and reaping the identified simplification potential, it is therefore proposed to:

- *Transfer the requirements of Directive 1999/35/EC to Directive 2009/16/EC, while:*
    - *Ensuring that these vessels qualify for a port State control inspection prior to commencement of a regular service ('pre-commencement' inspection) and thereafter twice per year; and*
    - *Ensuring that one of the two annual inspections complies with the requirements included in Annex III to Directive 1999/35/EC; and*
    - *Ensuring that the other inspection complies with the requirements of Annex IV (and elements of Annex I and III) of Directive 1999/35/EC, one part of which shall be carried out outside port.*

On average, this would reduce the inspection burden from the ship perspective from 4 to 3 inspections per year. From the perspective of national administrations, the reduction can be even more substantial, given that according to the current requirements, every ro-pax inspection should be in principle carried out jointly by two (or more) host States[22]. Although the notion of joint inspection is to be retained for this type of vessels (see Chapter 6.2.6.), it would no longer be mandatory.

[20] Directive 2009/16/EC includes a similar provision, stipulating that an inspection carried out within the Directive 1999/35/EC regime can be counted as a PSC inspection for the purposes of the Member State's "inspection commitment " only if it covers the items of Annex VII of Directive 2009/16/EC, which includes pollution prevention (MARPOL) and working and living conditions (MLC).

[21] In that case, however, the ro-pax surveys have to also cover the international conventions, such as MARPOL and MLC, currently not covered in the Directive 1999/35/EC legal base.

[22] Unless an involved host State agrees to carry out a survey at the request of another involved host State, Art. 11(3) of Directive 1999/35/EC.

Table 4: Example of inspections – year 2014

Ships	No of ships	2014 surveys			Max (none combined)	Min (99/35 and PSC combined)	Difference
		99/35	Expanded PSC*	FS			
Group 1	220	720	521	220	1461	940	521

Source: EMSA on the basis of the THETIS database, Commission, 2015 (revised according to the proposal)

**Although not identified as such, most of these inspections are likely to be expanded ones because of the age profile of the ships and because it is in the interest of the national administrations.*

The illustrative estimates based on example of data from 2014 show that the difference between the minimum and maximum number of inspections was around 520. Taking into account the average unit cost of a ro-pax survey estimated at EUR 1340[23], this amounts to a total of approximately EUR 700 000 in monetary terms. Similarly to Table 3, this illustrates the maximum synergies that could be, at least theoretically, possible to reach (unless already done so). However, in case of the port State control the simplification potential is more likely to be reached in full, given that both inspections are carried out by the national administrations themselves, which gives them the flexibility to carry out both at the same time.

From an operational perspective, the only change in comparison to status quo would be for ships that are currently flagged in one of the host States. For those vessels, the ro-pax inspections can be currently also combined with a flag State survey (similarly as described for groups 2 and 3 above)[24]. In reality, the share of such vessels in this group can range between 10-50 percent and change from year to year due to flag changes.

During the fitness check, it was assumed that for the sake of calculation, in case of 100 ro-pax inspections in 2014, flag State is an EU Member State and it is one of the host States, i.e. combination with a Directive 1999/35/EC survey is possible. This would no longer be the case under the PSC inspection regime, which is nonetheless considered to be compensated by the possibility to count additional ca. 200 ro-pax surveys into the fair share of port State inspections (depending on the decision of a Member State to carry them out as expanded PSC).

[23] Not differentiating between in port and in service surveys as the difference in cost is limited. See Annex 6 of SWD(2015)197.

[24] This is however not the case for non-EU flagged ships, where the flag State survey is carried out by a different administration than the one carrying out the ro-pax survey.

In the consultation, 13 Member States and Norway agreed with the proposal while 4 MS disagreed (DK, IE, ES and another MS) and 2 MS expressed no opinion (DE and another MS, albeit DE expressed their support at a later stage). From those who disagreed, IE was concerned about the treatment of inspection in a port outside the EU (which would remain to be the case only in the framework of inspections during regular service) and about the possibility of joint inspections (flag State could still be present if requested by the company). ES noted that altering the selection mechanism of the PSC Directive may create new problems but did not indicate which ones. Another MS insisted that both annual ro-pax survey shall be conducted as expanded PSC inspection (in the spirit of proportionality and subsidiarity, this shall be left to MS to decide. This flexibility also allows preserving the requirements of the current Directive 1999/35/EC).

DK noted that where an EU flag State is currently carrying out the ro-pax surveys on behalf of the other host State, this proposal would mean that the inspection burden is shifted from that EU flag State to the other host (i.e. port) State. This would indeed be the case. In practice, this shouldn't be a problem for the port State in question as if the inspection(s) carried out are expanded inspections, one or both will count towards the port States' inspection commitment under Directive 2009/16/EC.

It is envisaged that this inspection burden would be, under the proposal, more explicitly attributed between the flag and port States. In any case, as explained above, it will overall decrease compared to status quo. As Sweden noted in the consultation: *"In order to avoid that it is always the flag State performing inspections on their own vessels, it should be clearly stated which host State is responsible for invitations, inspections and documentation in Thetis."*

Clarification of ambiguous requirements

Over the time that Directive 1999/35/EC has been in place, a key issue has emerged to undermine its effectiveness in ensuring a common safety level: Different interpretation of the time window between the bi-annual inspections. In addition, the Directive leaves certain ambiguity as regards whether a survey during a regular service should be carried out when the ship is sailing or whether this survey can be carried out in port.

6.2.3. Regularity of inspections

Article 8 of Directive 1999/35/EC indicates that every 12-month period a specific survey and a survey during regular service must be carried out by host States. Although it was the intention of the Legislator that the two inspections are carried out with a certain time lag, i.e. 5-6 months, the fitness check demonstrated that this has not always been the case. While in some Member States these two inspections are carried out with a time interval from 4 to 6 months, in others the two annual inspections are carried out on consecutive days (BE, BG, MT, PT and EL "within a short period of time"; also in Norway).[25] This latter practice means that, in reality, the ship is only inspected once per year.

[25] See Annex 4 of SWD(2015)197.

To remove the ambiguity of this requirement and to ensure a common safety level, the regularity of the two annual inspections should be specified. In view of the fitness check recommendations, it is therefore proposed to clarify that the two annual inspections should take place at regular, approximately six monthly intervals, i.e. that:

- *An annual inspection during a regular service ('in-service') should take place not before five months but not later than seven months following the annual specific survey ('in port').*

14 Member States and Norway agreed with the proposed wording while 4 Member States disagreed and 1 had no opinion. Addressing the concerns of those who disagreed, account will be taken of vessels in seasonal service (functions of the database would be used for this purpose), as highlighted by ES and IE. BE and DK disagreed with the need to clarify the regularity of the inspections altogether, noting that it should be up to the administrations to decide (and that it would limit the flexibility of combinations with the annual flag State survey). In response to these comments, the safety objective of this Directive needs to be recalled, whereby it was not intended to prescribe two inspections per year that could then be carried out at the same time or within a short period of time.

6.2.4. Content of survey during a regular service

Concerning the content of the 'in-service' survey (i.e. a survey during a regular service), Article 8 includes vague wording such that 'enough' items listed in Annex IV (and Annex I and III) should be covered. This leaves certain ambiguity not only about its content but also whether this survey should be carried out when the ship is sailing or whether this survey can be carried out in port.

In fact, the requirements of Annex IV clearly necessitate at least a part of the survey to be carried out while the ship is sailing (such as checking on the availability of seats, the blocking of passageways, safety announcements during voyage, ventilation of the vehicle decks etc.).

However, the current wording may, in theory, allow a systematic omission of elements that can be inspected only while the ship is sailing. To remove this ambiguity while preserving the notion of 'in-service' surveys and retaining sufficient flexibility for the Member States, it is therefore proposed to:

- *Clarify that 'in-service' surveys shall be carried out in accordance with Annex IV and, in addition, must include items from Annex I and III selected by the national administration to ensure that the ferry or craft continues to fulfil all the necessary requirements for safe operation.*

In consultation, the large majority of Member States (16) and Norway agreed that Annex IV should form basis of in-service inspection along with selected items from Annexes I and III. PL and DK disagreed and argued that in-service surveys shall be 'occasionally' carried out on the vessel underway (which would however defeat the purpose of the proposed clarification and the fact that in-service surveys are meant to take place at least partly when the ship is sailing) and that safety of operations needs to be preserved (which would always be the case).

Simplification

The Directive also includes a number of concepts and requirements that have become outdated or redundant. This relates primarily to the concept of the 'host State' that was introduced by this Directive to facilitate the cooperation with non-EU Member States prior to the 2004 EU enlargement. In this context, it called for the surveys to be carried out by multinational teams of the involved host States (i.e. EU as well as non-EU members). The Directive also includes provisions that have been either superseded by other legislation (i.e. accident investigation) or evaluated as redundant.

6.2.5. Concept of host State

Directive 1999/35/EC in Article 2(k) defines host State as a 'Member State to or from whose port(s) a ro-ro ferry or a high-speed passenger craft is engaged on a regular service'. This concept was found to be no longer relevant in practice and unnecessarily add to the legal complexity of the EU passenger ship safety regulatory framework. In view of the fitness check recommendations and in line with the proposed alignment with Directive 2009/16/EC, it is therefore proposed to:

- *Replace the concept of the host State by the port State (for vessels subject to port State control) or by the flag State (for vessels not subject to port State control).*

In correspondence to the state-of-art maritime legislation, this proposal re-attributes the specific survey requirements according to the flag/port States responsibilities rather than specific type of vessels they apply to.

In consultation, all Member States except one (IE) and Norway agreed to remove the concept of host state (2 MS expressed no opinion). IE noted that they consider the concept of host state to be an important concept under 1999/35/EC but did not provide further explanation. In addition, UK noted that the concept of host state should be also removed from Directive 2009/45/EC (which is also proposed).

6.2.6. Joint inspections

While Article 11 of Directive 1999/35/EC requires the ro-pax surveys to be carried out by a team composed of qualified inspectors of the involved host State(s) (para 2), it allows for an involved host State to carry out a survey at the request of another involved host State (para 3). At the time of its conception (i.e. more than 15 years ago), the objective of this provision was to allow for multinational teams composed of both EU as well as non-EU members.

Although the fitness check showed that there is a clear value in carrying out joint in-service inspections, these have proven to be logistically difficult to coordinate and the large majority of Member States confirmed that a specific survey by a host State can be accepted by other involved host States without the necessity of creating multi-national teams. In view of the fitness check recommendations and in line with the proposed alignments with Directive 2009/16/EC, it is therefore proposed to:

- *Remove the requirement that the ro-pax surveys should be carried out by default jointly by the involved host State(s) and replace it by a possibility for the inspector of the competent authority of the port State to be accompanied (by a port State inspector of another Member State, or if requested by the company by a representative of the flag State of the vessel).*

Box 1: Applicability of joint inspections

For vessels operating domestically, the concept of joint inspections does not apply. For vessels operating between an EU MS and a third country where the flag of the vessel is the same as that of the MS, the decision to invite a third country to its ro-pax inspection would be, in the spirit of subsidiarity, fully at discretion of that Member State. For vessels subject to port State control, the spirit of joint inspections is proposed to be retained as described above.

Similarly to the removal of host state concept, the large majority of Member States (16 MS) and Norway agreed in consultation to remove the requirement of joint inspections by default. 2 MS objected (IE and another MS). IE noted concerns regarding possible difficulties arising where detainable deficiencies are identified on board a vessel which is en route to a MS not involved in the inspection onboard (such situation can in principle happen already today and no such concern has been registered since the Directive's entry into force).

DK noted that although they agreed with the proposal, it may in case of lack of communication between the administrations lead to more individual surveys than today (not clear though how this could happen, as the frequency would be clearly defined both under the PSC regime and the new Directive replacing Directive 1999/35/EC). PL agreed in general but not in case where host State is the same as the flag State (similar comment by DK is addressed in Chapter 6.2.2.).

6.2.7. Initial verification

Articles 4 and 5 of Directive 1999/35/EC provide for specific requirements related to 'initial verifications' in relation to vessels, companies and flag States. Given that these provisions have been either superseded by other legislation (i.e. accident investigation) or are proposed to be aligned with the port/flag State responsibilities and are already embedded in the initial surveys mandated by Article 6, it is proposed to:

- *Remove the outdated and redundant elements of Articles 4 and 5, in particular related to accident investigation, VDR, specific stability requirements and certification.*

This proposal is expected to result in simpler requirements for initial surveys without compromising on their content. In consultation, the large majority of Member States (16) and Norway agreed to remove Articles 4 and 5 entirely and one MS expressed no opinion. IE and FR disagreed, IE noting that they are not aware that such requirements can be checked during PSC (to be noted though that the requirements of Annex I are mainly ISM related therefore they should be inspected during PSC) and FR arguing for the possibility to access documents before the initial specific inspection.

In view of proportionality and subsidiarity, it is nonetheless considered that the decision as to whether and which documents shall be provided in advance of the initial inspections would be left to flag State (analogous concept exists in the port State control regime and is widely used). It is therefore also proposed to indicate that

- *When requested by a Member State, companies shall provide evidence of compliance in advance.*

This proposal is directly linked to removing Articles 4 and 5 as proposed above.

Increase legal clarity

The review also includes a number of proposals removing outdated, inconsistent or redundant provisions and references from the Directive.

6.2.8. Outdated and redundant provisions

Firstly, Annex IV of Directive 1999/35/EC refers to 'indicative guidelines' and 'unscheduled' surveys. Firstly, Article 8 refers to Annex IV as a mandatory part of the 'in-service' surveys and therefore cannot be considered to be indicative. For the sake of legal clarity, it is therefore proposed to:

- *Remove the reference to 'indicative guidelines' from Annex IV without any replacement.*

Secondly, given that the Directive provides for 2 annual inspections carried out in regular intervals, the notion of 'unscheduled' surveys could be interpreted as 'unannounced' surveys. The intention of 'unannounced' surveys is to give national administrations the opportunity to inspect the ship in a state as close as possible to its usual operation (related to, for example, operability of communication equipment, maintenance of safety equipment etc.).

However it should also be noted that Article 11(4) and (5) of Directive 1999/35/EC provides that the host State shall, if requested by the company, invite the flag State administration to participate in any survey and that the host state shall take due account of the operational and maintenance schedule of the vessel. Therefore it appears that the reference to 'unscheduled surveys' in the Title of Annex IV is not supported by the text of the Directive or the Annex.

In the consultation, several alternatives have been proposed: (a) to replace the notion of 'unscheduled' surveys in Annex IV by 'unannounced' surveys', (b) to remove the notion of 'unscheduled' surveys from Annex IV without any replacement, and (c) to remove the notion of 'unscheduled' surveys from Annex IV and replacing it by a requirement that such surveys shall be occasionally carried out in an unannounced manner (and leaving the decision on the frequency to the satisfaction of national administrations). Member States had slight preference for option (c) – 10 Member States preferred this alternative, while 4 Member States preferred option (b) and 3 Member States preferred option (a) (plus DE that expressed its preference at a later stage).

Taking into account the split views and the fact that any decision to carry out such surveys in an unannounced manner and their frequency would be anyhow left to the discretion of national administrations, it is proposed to:

- *Remove the notion of 'unscheduled' surveys from Annex IV without any replacement.*

Thirdly, Directive 1999/35/EC provides for a notification to the Commission in case of persistent disagreement between host States {Art. 11(7) and (8)}, in relation to Articles 4 and 5(1). Since the entry into force of this Directive, this mechanism has not been used.

For vessels falling within the scope of port State control, as proposed, it would be replaced by the existing Paris MoU dispute resolution mechanism. No specific replacement is envisaged for vessels sailing domestically or between an EU flag State and a third country as the flag state and the inspecting state would be the same. It is therefore proposed to:

- *Remove the dispute mechanism related to requirements of Articles 4 and 5(1) without any replacement.*

Fourthly, the Directive provides for the Commission to allocate an identification number to vessels that do not have an IMO identification number {Art. 13(3)}. This provision has never been used and is considered redundant. It is therefore proposed to:

- *Remove the mechanism for allocating an identification number without any replacement.*

Finally, a number of other outdated references have been removed:

- *Reference to Directive 98/17/EC replaced by a reference to Directive 2009/45EC;*
- *Reference to Directive 94/57/EC replaced by a reference to Regulation (EC) 391/2009;*
- *Reference to Decision 1999/468/EC replaced by a reference to Regulation (EU) 182/2011 where appropriate;*
- *Reference to prior cooperation, navigational guidance and contingency planning operational restrictions for HSC removed {Article 13(1), (2), (4) and (5)}.*

6.2.9. Inconsistent and incorrect provisions

Directive 1999/35/EC refers to 'surveys' rather than 'inspections'. The word survey is used in international conventions to indicate the obligation of flag States to monitor the compliance of ships with the international standards and to issue or renew, where relevant, certificates. However, the special inspection regime for ro-pax ferries and HSC on regular service cannot be considered a survey (no certificates are issued or renewed) and the relevant inspection forms are not and cannot be considered as seaworthiness certificates. To ensure the correct use of terminology and in view of the fitness check recommendations, it is therefore proposed to:

- *Replace the term 'survey' by 'inspection' when referring to specific ro-pax surveys as currently provided for in Directive 1999/35/EC.*

In addition, a number of definitions have been aligned as far as possible with Directive 2009/16/EC, namely:

- *Format of the notification report aligned with Directive 2009/16/EC;*
- *Provisions for the prevention of operation aligned with Directive 2009/16/EC.*

6.3. Directive 98/41/EC

Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community aims to ensure that the safety of passengers is not compromised by exceeding the maximum authorised number of persons on board and that any search and rescue in the aftermath of any accident or incident which may occur can be dealt with effectively. The Directive provides for the counting and registration of passengers and crew on board of passenger ships operating to and from the EU ports.

Clarification of scope: Definitions

The fitness check and a recent increase in exemption requests and notifications submitted in accordance with Article 9 of Directive 98/41/EC has revealed that the scope of application of the Directive is not entirely clear. Furthermore, the implementation experience showed that in certain cases the Directive's provisions such as the key threshold of 20 nautical miles is interpreted in a different manner, which may hinder an effective implementation of the legislation.

6.3.1. Scope of application: Sea-going vessels

Article 2 defines 'passenger ship' as a sea-going ship or sea-going high-speed craft which carries more than twelve passengers. This definition was found to be both ambiguous ('sea-going') and inconsistent with Directive 2009/45/EC. In order to remove inconsistencies in definitions across EU passenger ship legislation while preserving the objectives of the Directive, it is therefore proposed to:

- *Remove the inconsistency by aligning the definition of passenger ship with Directive 2009/45/EC, i.e. a ship which carries more than 12 passengers; and*
- *Clarify that Directive 98/41/EC does not apply to passenger ships exclusively engaged in a 'port area', as defined in Article 2(r) of Directive 2009/45/EC.*

Without changing the scope of the Directive, this proposal aims at clarifying that for the purposes of Directive 98/41/EC, 'sea area' ends at the inner border of sea area D as already defined by the Member States for the purpose of Directive 2009/45/EC. This will also allow to align the scope of application across the EU passenger ship safety legislation and enhance thus legal clarify and consistency.

This proposal is not intended to impact on Member States' own definitions of sea area boundaries (as questioned by the UK). As it is already the case, it remains within the discretion of Member States to decide where sea area D should end and where other non-sea areas should start (and how they should be demarcated), such as ports, estuaries or similar sheltered areas, inland waterways etc. Correspondingly, it remains fully within the discretion of national authorities to define the conditions for passenger registration for ships sailing in these areas.

This clarification was supported by all Member States and Norway that replied to the targeted consultation, with the exception of IE who did not find the current wording of the Directive ambiguous.

6.3.2. Protected sea areas

Article 2 defines 'protected sea area' as an area sheltered from open sea effects where a ship is at no time more than six miles from a place of refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured. Although the aim of this definition is to mirror sea area D as defined in Directive 2009/45/EC, the two definitions are not identical – which unnecessarily creates ambiguity and potential confusion with the notion of port (sheltered) area defined in Directive 2009/45/EC. To remove this inconsistency and to maximise the coherence of the EU passenger ship safety regulatory framework, it is therefore proposed to:

- *Replace the reference to protected sea area in Article 9 of Directive 98/41/EC by a reference to sea area D as defined in Directive 2009/45/EC.*

In the consultation, while 15 Member States and Norway agreed with the proposed alignment and clarification, several comments have been made concerning the fact that the two definitions are currently not identical and warned against changing the status quo. In addressing these concerns, the following aspects need to be taken into consideration:

First, it should be recalled that the only purpose of defining 'protected sea area' in Directive 98/41/EC is to allow for a possibility of exemptions from the Directive's requirements under conditions defined in Article 9(2b) and 9(2c). To date, no such exemption has yet been approved by the Commission, although several cases are currently under consideration (from DE and FR).

Second, there is currently significant legal uncertainty as to the interpretation of what a criterion of 'sheltered from open sea effects' stands for in measurable terms. Some experts consider this to be max 0.5 m of significant wave height, other consider this to be up to 1 or 1,5 m. Therefore, in response to comments of FR (who found sea area D less restrictive) and DE and UK (who found it more restrictive), it is clarified that Member States shall remain to be best placed to assess the need for granting an exemption in an area that is, nonetheless, clearly delimited for such purpose.

Finally, two Member States noted that the reference to the proximity of search and rescue facilities should be kept, which indeed best fits as a criterion for granting the exemption. It is therefore proposed to add this condition to the exemption in Article 9(2c) that would read as follows:

- *A Member State may exempt passenger ships sailing, exclusively in protected sea areas, in which the proximity of search and rescue facilities is ensured, between two ports or from and to the same port without intermediate calls from the obligations laid down in Article 5.*

Similarly to the above mentioned alignment, it was originally envisaged to align also a definition of sea area defined for exemption purposes under Article 9(4) with a sea area C. Although a large majority of Member States agreed with such alignment, it was pointed out (namely by IT) that such alignment would materially change the current conditions for exemption (introducing the distance limitation) and that, unlike in case of the protected sea area, the current definition is sufficiently clear and operational (significant wave height of 2 meters). This proposal was therefore dropped.

6.3.3. Threshold of 20 nautical miles

Article 5(1) requires certain information on persons on board to be recorded for every voyage of 'more than twenty miles from the point of departure'. This definition was found to be ambiguous given the lack of clarity whether this distance restarts at each intermediate stop, whether it is measured as a sailed distance, etc. In order to clarify this definition and as a follow-up to the fitness check recommendations, it is therefore proposed to:

- *Clarify that the 20 nm distance from the point of departure stands for distance sailed by the ship from the port of departure to the next port of call.*

Without changing the criterion, this proposal aims at clarifying that: (i) the 20 nm is to be calculated as a sailed distance, not as a distance to or from the port of departure, and (ii) this distance restarts at each intermediate stop.

In the consultation, DK and UK pointed out that the originally proposed wording of 'actual' distance sailed may indicate that the distance may change from voyage to voyage depending on, for example, traffic and weather. The word 'actual' has been therefore dropped from the definition to preserve the status quo. Furthermore, it is not proposed to replace it by the word 'planned' as suggested by DK.

Alternative wordings have been also put forward by the UK (straight line measurement between point of departure and arrival), IT (voyage of more than 15 miles from a place of refuge), IE (excluding that part of the voyage that is within port areas), and another MS (distance defined by the associated ports of call). These suggestions have not been reflected in the proposed wording as they are considered to substantially change the current requirement, which was not the intention of this simplification review and was not consulted upon.

Increasing effectiveness of search and rescue operations

While experience has shown that an effective search and rescue operation requires immediate access to accurate data as regards the persons on board, such information is not always available in real time and in a usable format. According to the current requirements, the information has to be stored in the company's system and be – at all times – readily available for transmission to the competent authority responsible for search and rescue. This requirement, dating to 1998, ignores the development of systems such as SafeSeaNet and the

National Single Window (introduced under Directives 2002/59/EC and 2010/65/EU[26] respectively) and means that the national competent authority has to contact the shipping company in the event of an emergency. Furthermore, the recorded data does not always include information on nationality making the provision of consular and other assistance to victims and their relatives more difficult. Finally, operators that already transmit such data to the National Single Window are exposed to double reporting regime.

6.3.4. Short voyages: Information on number of persons on board

Article 4(2) requires that the number of persons on board shall be communicated to the 'company's passenger registrar or to a shore-based company system that performs the same function'. Taking into account other EU law that has entered into force since 1998, new technological system and solutions that have been developed, the fitness check recommended to update and bring this requirement in line with the current electronic means of data storage and accessibility via the National Single Window.

The National Single Window was established by Directive 2010/65/EU to provide for a single window, linking SafeSeaNet, e-Customs and other electronic systems, and ensuring that all information is reported once and made available to various competent authorities and the Member States.

In view of the fact that all ships above 300 GT calling in EU ports in principle already have to report the total number of persons on board in the National Single Window, this provision would allow them to comply with both obligations in the same manner. Nonetheless, it has been acknowledged that small or local operators (generally operating ships below 300 GT) may still keep paper-based records only and would be therefore negatively impacted by the proposal to encode the total number of persons on board in the National Single Window.

Member States have been therefore asked, on the basis of their experience of approving passenger registration systems, to identify any instances where this may be the case and to indicate whether they would consider this proposal proportionate and propose alternative means of data transmission.

In the consultation, 11 Member States agreed with the proposed transmission of the number of persons on board by means of the National Single Window but a significant number (9 Member States and Norway) disagreed with doing so. These Member States raised the issue of potentially significant cost implications of investments in information technology systems for shipowners operating passenger ships below 300 GT (primarily on domestic voyages) and the proportionality of such requirement in view of the search and rescue needs (with the exception of UK that supported the search and rescue needs but questioned the tool, see Box 2 below).

[26] Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

To address the specific situation of those small shipowners that do not have computer systems (as explicitly raised by FR, NL and one MS) or that operate without internet connection (pointed out by IE and UK), it is deemed necessary to provide for an alternative way of transmitting the number of persons on board. The only feasible alternative that fulfils such criteria and that has been suggested in the consultation (by IE) was found to be the Automatic Information System (AIS) of ships.

AIS is a maritime broadcast system, based on very high frequency radio signals. Ships send reports with ship identification, position, course, as well as information on cargo. The use of AIS for passenger ships irrespective of size is already an obligation under Directive 2002/59/EC. Nonetheless, under Directive 2002/59/EC, exemptions may be granted by Member States for ships below 15 metres in length or 300 GT engaged on non-international voyages.

Box 2: Example

During the consultation, UK highlighted that it already uses AIS for reporting the number of passengers for very short voyages of a few minutes on the River Thames.

On this basis and in order to eliminate double reporting requirements and to ensure that the information on the number of persons on board is made immediately accessible to the designated authority for search and rescue purposes in the event of an emergency or accident, it is proposed to

- *Replace the requirement to transmit and store the information on the number of persons in the company's shore-based system by the requirement to record such information in the National Single Window or make it available by means of the Automatic Identification System (AIS).*

It is envisaged that the proposed flexibility would on one hand neutralise any significant or disproportionate cost increase for small operators and on the other deliver on the key safety objective of the Directive, i.e. allow the local search and rescue centre to access the number of persons on board at any point of time, regardless of the availability of a contact person.

For those operators that already transmit this information to the National Single Window, the proposed alignment with Directive 2010/65/EU would eliminate a double reporting requirement. Whether this will have neutral or positive impact on companies' processes will depend on a case-by-case basis, determined by their individual use of IT. In any case, it will remove the coexistence of similar reporting requirements spread across several pieces of legislation with different scope and coverage that reduces legal clarity and hinders an effective implementation and enforcement.

In the discussion on this proposal (see Annex 2), the experts welcomed the flexibility of having an alternative to the National Single Window. A number of comments were made regarding the functioning of AIS as a pre-programmed device and the fact that old AIS devices may need to be upgraded. Furthermore, some experts underlined the fact some

Member States made use of the possibility to exempt domestically sailing passenger ships below 300 GT under Directive 2002/59/EC from the obligation to carry AIS on board.

In response to this comment, it is considered that it should be left to the national administration to assess whether such exemptions granted under different legal and market situation remain justified. To inform such decision, it should be recalled that the AIS is a rapidly changing technology, the price of which has rapidly dropped since Directive 2002/59/EC entered into force (i.e. 14 years ago). An AIS system (transmitting/receiving) with additional software to connect to a computer (which maybe already available on board) currently costs approximately 2000 EUR/unit and the price is continuously declining. Considering furthermore that such requirement will be accompanied by a possible phase-in period of several years, the foreseen expenditure is not assessed to be significant and in any case proportionate in respect to the overall increase of the effectiveness of the search and rescue operations in case of distress.

Although it is not known which Member States granted such exemptions and to how many operators (given that Directive 2002/59/EC does not require any notifications in this respect), according to the REFIT fitness check questionnaire, out of the 922 ships certified under Directive 2009/45/EC only around one third are below 300 GT. It can be estimated that only a small minority of these have been granted an exemption by the Member States from carrying out an AIS system; which further reduces the number of ships which would need to make such investment.

Finally, in conjunction with the proposed flexibility of reporting the number of persons on board and the clarification that Directive 98/41/EC does not apply to port (or similarly sheltered areas) defined by Member States, it is considered that the existing possibility to exempt certain operators from obligation to report the number of persons on board {according to Article 9(2b)} is no longer justified. The implementation experience has shown that such exemption has anyhow not been used by Member States (with only 2 cases assessed so far, one from SE where it was concluded that Directive 98/41/EC does not apply and one from FR where the assessment is still pending).

Therefore, taking duly account of the safety benefit of an immediate availability of information on the number of persons to search and rescue authorities, and the significant progress in communication technologies since the adoption of Directive 98/41/EC, it is proposed to:

- *Remove a possibility to exempt passenger ships operating, exclusively in protected sea areas, regular services of less than one hour between port calls from the obligation to communicate the number of persons on board on shore.*

As explained above, with only one case pending so far, the removal of this provision is not expected to have any impact in practice. It means that the operators have to already communicate the number of persons on board to shore – be it via telephone, paper, or radio. This action would be replaced, if AIS is used, by a similar action of encoding the number in the AIS transponder. The difference between these two actions is considered to be negligible.

6.3.5. Long voyages: Passenger and crew lists

Article 5(2) requires that the list of passengers and crew shall be communicated to the 'company's passenger registrar or to a shore-based company system that performs the same function'. Taking into account other pieces of EU law that have entered into force since 1998, new technological system and solutions that have been developed, the fitness check recommended to update and bring this requirement in line with the current electronic means of data storage and accessibility via the National Single Window.

Unlike for the short voyages where only the number on persons on board has to be recorded, for long voyages (above 20 nautical miles) the Directive already requires the list of passengers and crew to be stored in a format that is easy to read and easily available. This requirement in principle already implies storage of passenger data in an electronic format. Only one Member State (NL) pointed out during the consultation that there is a segment of traditional vessels that keep passenger and crew lists in paper format only. It was then discussed whether this practice is in line with the safety objectives and requirements of the Directive and what is the likelihood that this would still be the case when the proposal can be expected to enter into force (see Annex 2).

Therefore, given that the technical interface of National Single Window is very flexible (accepting e.g. Excel files), the requirement to transmit such (already existing) electronic file is not expected to generate any significant cost increase for operators that are not yet connected to National Single Window. In principle, recording the lists in the National Single Window is a similar action to transmitting them to the registration system of the company (i.e. as long as they are in an electronic format).

Depending on a case-by-case basis, recording the lists in the National Single Window may, in addition to the company's operation system, require an internet connection. It is however unlikely that operators on long voyages would not have an internet connection and even if that was the case, such investment would be minimal and fully justified by the safety benefits of accurate transmission of passenger and crew lists in electronic format. No specific concerns in this respect have been raised by the industry stakeholders besides the fact that National Single Window is not yet fully operational in all Member States (see Annex 3).

Furthermore, this proposal would eliminate double reporting obligation for those ships operating between the Schengen and non-Schengen area that already have to report the list of passengers and crew in the National Single Window (according to the Regulation (EC) 562/2006[27]).

In order to ensure that the information on persons on board is made immediately accessible to the designated authority for search and rescue purposes in the event of an emergency or accident and without prejudice to the right of Member States to exempt certain operators from

[27] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

this obligation according to Article 9(2c) and 9(4) of Directive 98/41/EC, it is therefore proposed to:

- *Replace the requirement to transmit and store passenger and crew lists in the company registration system by the requirement to record such information in the National Single Window.*

Most Member States agreed with this proposal in the consultation (13 MS). 6 MS (DE, DK, IT, NL, PL and UK) and Norway indicated that it may lead to significant impact on operators However, no evidence or justification was provided that could demonstrate that this would be indeed the case. According to DE, DK and PL, there may be a negative impact but it is unknown/no explanation was provided. IT indicated that it currently requires reporting on a weekly basis for certain vessels. NL recalled that some companies keep the lists in paper format only. UK (and industrial stakeholders, ECSA) agreed in principle but pointed out that National Single Window is not yet fully implemented (there is nonetheless an obligation for all Member States to have the National Single Window operating since June 2015 and in any case, by the time the proposed amendments will enter into force, the system must be fully functional).

In this context, FR (and industrial stakeholders, ECSA) proposed to await the evaluation of Directive 2010/65/EU before requiring all operators to use NSW. There is however no reason why this should be the case as Directive 2010/65/EU does not define any reporting obligations, it only facilitates them. Furthermore, it already provides for the required data entry of both number of persons on board and passenger/crew lists. Nonetheless, to maximise the simplification potential, increase legal clarity and minimise unnecessary changes, it is proposed to:

- *Simplify, clarify and align, as far as possible, the list of required data entries with reporting requirements into the National Single Window (i.e. regarding information on the first name and age, require only 'forename' and 'year of birth').*

No alternative option has been identified or suggested by stakeholders that would ensure that the information on the persons on board is stored an electronic system that in the event of an emergency or accident allows for an immediate transmission of data to the competent authority and that already exists (i.e. without creating new systems or additional layers of reporting).

6.3.6. Nationality

Article 5(1) defines which passenger information shall be recorded for voyages of more than twenty miles from the point of departure. This list does not currently include information on nationality of persons on board. As the consultation process and accidents have also shown, it is of outmost importance to have available from the very early stage of a post-accident phase not only the number and the list of persons on board (this requirement applies to long voyages only, i.e. beyond 20 nautical miles) but also the passengers' nationality.

Some operators already report such information, namely when using the international reporting forms such as FAL forms 5 and 6 as provided for in Directive 2010/65/EU. The passenger information (name, date of birth, etc.) is currently recorded on a basis of self-declaration of passengers. To improve the effectiveness of search and rescue operations and in view of the fitness check recommendations, it is therefore proposed that the nationality of persons on board is registered:

- *Information on nationality is included in Article 5(1).*

To ensure that operators face none or marginal cost of such additional data entry, this information should be registered and transmitted to the competent authority using the same means and criteria as the ones in place for registering and transmitting the already required information on the persons on board (i.e. on the basis of self-declaration and by using the National Single Window).

In the consultation, only DE and DK disagreed with including nationality in the list of passenger information. 15 Member States and Norway agreed and 2 expressed no opinion. FR and SE pointed out that nationality has been already added as a requirement in national rules. Industrial stakeholders (ECSA) called for retaining the principle of self-declaration.

6.3.7. Delay in registering passenger and crew lists

Article 5(2) requires the lists of passengers and crew to be communicated on-shore 'not later than thirty minutes after the passenger ship's departure'. Taking into account the fact that the 20 nm distance can be sailed (by high-speed craft) in a similar time period, progress made in IT technology over the last 15 years and the fact that personal data should in any event be collected before departure, the 30 minutes delay in communicating the personal data appeared to be no longer justified.

It was therefore considered to align the communication of passenger and crew lists with the communication of the number of persons on board that is, according to Article 4(2), required to be communicated on-shore 'before departure'.

During the consultation, 12 Member States and Norway agreed with the proposed alignment but a number of Member States highlighted that once the data is collected (which has to be done before departure), certain time is needed to correct recording mistakes (FR), if any; or to record persons that boarded at last minute (MT, IT, one MS). FI noted that the requirement ‘before departure’ may result in delaying the ship departure until confirmation is given that the information has been transferred. DE, FI and FR preferred to retain the 30 delay while Italy suggested an alternative wording of ‘upon departure’ and another Member State suggested shortening 30 to 10 minutes. MT also proposed the shortening of the 30 minutes window but retaining some flexibility due to port clearance formalities and activities happening before a vessels departure. Industrial stakeholders (ECSA) called for reporting the lists ‘up to the point of departure’ (albeit it had to be clarified that the current requirement does not stand for 30 minutes before but after departure).

To send a strong signal that the objective is to have such data 'at all times' accessible in case of an emergency or accident while reconciling the opposing views of Member States, it is proposed to retain the current flexibility but to highlight that such data should, in principle, be communicated ‘upon departure’:

- *Require that the lists of passengers and crew are recorded in the National Single Window upon the passenger ship's departure but in no case later than thirty minutes after its departure.*

Alternatively, it could be envisaged to shorten the 30 minutes delay, for example to 10 minutes as suggested by one Member State. However, there is no evidence at this moment that could demonstrate that there is justified difference between, for example, 10, 20 or 30 minutes.

Ancillary issues

Several ancillary changes to definitions and requirements are determined by the modifications proposed above and have been therefore reviewed correspondingly.

6.3.8. Personal data retention period and accessibility

Article 8 requires that the company should not keep personal data collected in accordance with Article 5 (i.e. lists of passengers and crew) longer than necessary for the purposes of this Directive. However, the Directive does not indicate how long such period should be or on what basis it should be defined (in recital 15, it only indicates that this period should be ‘very short’). The implementation experience has shown that the data retention period importantly differs across Member States – ranging from hours, weeks to months after the voyage has been (successfully) completed. This difference is primarily driven by the applicable national legislation for data protection.

In the consultation, all Member States and Norway preferred to retain the current flexibility in implementing the Directive’s data retention provisions. Italy called for maintaining the responsibility regarding the protection of personal data at national level.

Nonetheless, this should also ensure full compliance with the EU rules on the protection of personal data[28], which requires retention period to be clearly identified. It is therefore proposed to specify the retention period in the Directive itself as an essential requirement (without prejudice to other legal requirements where such data is collected for different purposes with different retention period) in the following manner:

- *Personal data collected in accordance with Article 5 shall not be kept by the company once recorded in the National Single Window; and*

[28] In particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p. 1).

- *Personal data collected in accordance with Article 5 shall not be kept by Member States longer than necessary for the purposes of this Directive that is:*
    - *until the moment the ship's voyage in question has been safely completed; or*
    - *in the event of emergency or in the aftermath of an accident, until the possible investigation or judiciary proceedings have been completed.*

- *Without prejudice to other reporting obligations, once the information is no longer needed for these purposes, such personal data shall be destroyed.*

Another advantage of this proposal is the transfer of personal data (from a company's system) to a common, secured environment where it can be better controlled that the data is appropriately protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access. It shall be also noted that if the companies wish or need to retain the collected personal data, they will have to do that on different legal basis but no longer for the purposes of this Directive.

Furthermore, the Directive currently provides for the required information to be made available to the designated authority for search and rescue purposes in the event of an emergency or in the aftermath of an accident (Article 8, para 2). Similarly to the above, all Member States and Norway agreed with maintaining this accessibility policy. In their comments, the UK noted that National Single Window requires data to be reported only once, but the data is used for different purposes (as specified in different pieces of legislation), hence the data retention may be difficult to comply with. It has to be therefore ensured that the recorded data is retained only for the maximum period that, in combination, is determined by the set of applicable legislation.

In order to preserve the current accessibility of information to the search and rescue authorities, it is therefore proposed that:

- *Each Member State shall designate the authority that will have access to the information required by this Directive; and*

- *Member States shall ensure that in the event of an emergency or in the aftermath of an accident, such designated authority has immediate access to the information required by this Directive.*

6.3.9. Responsibilities of passenger registrar

Article 2 defines passenger registrar as the responsible shore-based person designated by a company to fulfil the ISM Code obligations or a shore-based person designated by a company as responsible for the keeping of information on persons who have embarked on a company passenger ship. In order to align the definition of passenger registrar with the proposals above and to reflect that such person would no longer be responsible for keeping the information but rather for recording it in the National Single Window or making it available by means of AIS, it is proposed to amend the definition as follows:

- *Passenger registrar shall mean the responsible person designated by a company to fulfil the ISM Code obligations or a person designated by a company as responsible for the transmission of information on persons who have embarked on a company passenger ship.*

Originally, it was also foreseen to change the title of passenger registrar and align it with the ISM concept of designated person ashore. However, during the consultation, several Member States noted that the change of title may only lead to confusion and that the ISM does not apply to all concerned ships. This proposal has therefore been dropped.

In addition, IE and another MS noted that for safety purposes, it would be preferable to retain the data with the company even if already transmitted via National Single Window (e.g. in case of technical issues with the electronic systems). At the moment, there is however no evidence that such double registration shall be necessary.

6.3.10. Company passenger registration system

Article 10 requires that Member States approve passenger registration systems (both as regards number and the list of persons on board). Given the difficulties encountered by Member States in approving the registration systems of foreign flagged ships, the ambiguity as regards the content and proof of such 'approval' and in line with the proposal above to record the information on the persons on board in the National Single Window, it is proposed to remove the requirement for a formal approval of such systems and to focus instead on the verification of the accuracy and timeliness of recording the data. In view of the fitness check recommendations, it is therefore proposed to amend Article 10 in a following manner:

- *Member States shall verify the accuracy and timeliness of data registration required by this Directive.*

In the consultation, all Member States and Norway, with the exception of DK and another MS, agreed with this proposal (BE had no opinion). DK noted that replacing the system's approval by verification of data registration may present serious administrative burden on the administration without benefit of improving ship safety. In response, it should be however noted that the Directive already requires Member State to carry out random checks on the proper functioning of the registration systems. While the timeliness of data registration can be easily checked in the system, its accuracy is considered to be crucial for meeting the Directive's objectives and ensuring efficient search and rescue operations in case of need.

On the contrary, the requirement to approve passenger registration systems has in certain cases proven to generate significant workload for some national administrations (e.g. 4250 working hours in Greece compared to 100 working hours in Italy)[29]. Such workload, and the corresponding costs, have been evaluated as clearly excessive, namely vis-à-vis its narrow scope, given its partial overlap with the ISM code and given the difficulty to verify the approval in the absence of any certificates. Most importantly, its added value was found to be

[29] See SWD(2015)197.

limited in addition to other, more substantial requirements focusing on the proper functioning of such system.

In line with the principle of proportionality and subsidiarity, it is considered that the choice of means and frequency of such verification should be left to the decision of national administrations. The proposed verification will also fulfil the purpose of currently required random checks.

Finally, in the absence of evidence that personal data collected for the purposes of this Directive need to be verified on the basis of an identity document, it is proposed to maintain the status quo, as recommended by the fitness check, and to:

- *Retain the principle of self-declaration of passenger information for voyages longer than 20 nm.*

Increase legal clarity

The review also includes a number of proposals removing outdated, inconsistent or redundant references from the Directive.

6.3.11. Outdated references

- *Outdated provision for the Strait of Messina is removed;*
- *Reference to Decision 1999/468/EC replaced by a reference to Regulation (EU) 182/2011 where appropriate.*

6.3.12. Inconsistent provisions

- *Definition of regular service is aligned with Directive 1999/35/EC;*
- *Definition of pleasure yachts is aligned with Directive 2009/45/EC;*
- *Exemptions procedures are aligned with Directive 2009/45/EC.*

7. Monitoring and evaluation arrangements

For the first time, the fitness check allowed to gather extensive quantitative data in a reliable and proportionate manner, requiring nonetheless extensive effort from the Commission, EMSA and the Member States. It also revealed the absence of monitoring arrangements that significantly hindered the monitoring and enforcement of the legislation (with particular regard to Directive 2009/45/EC for which monitoring and evaluation has been extremely limited).

The data was limited both with respect to the fleet of domestic passenger ships and safety accidents, as well as the implementation of existing regulatory framework. Adequate monitoring and reporting arrangements therefore need to be put in place, while avoiding undesirable new reporting obligations and administrative burdens. The key information on fleet, accidents and compliance shall be collected as follows:

7.1. Accident statistics

Data on accidents is collected in the European Marine Casualty Information Platform (EMCIP), the EU database on maritime accidents established in 2011. The number of years for which data is available in EMCIP is therefore still rather limited but through continued collection more information will become available over time. The longer the EMCIP database operates and collects Member State data, the bigger the relevant dataset and better information on trends can be gathered. As it is gradually filling, this database should over time become a source for better accident statistics.

7.2. Fleet evolution

The situation concerning the data on the size and composition of the fleet is more complex. The 2014 data gathering exercise was the first of its kind and required several rounds of consultations, corrections and effort both on the part of national administrations and EMSA/Commission. A database has been created and would need to be updated to allow for monitoring of the EU domestic passenger fleet composition and the accident trend. As a minimum, it will need to be updated in time for the next review of the regulatory framework. However, it can provide useful information for the policy makers (primarily as regards the attained safety level and the applicable safety standards).

In any case, the update does not necessitate any additional reporting requirements as an appropriate framework providing for the assistance of national experts is already in place (similarly to the REFIT fitness check, this could be done on an ad-hoc basis by circulating a pre-filled questionnaire to members of the expert group). It concerns primarily regular discussions with national experts in the framework of the expert group, facilitating the shared understanding and evaluation of the existing regulatory framework.

7.3. Implementation scoreboard

The fitness check has also demonstrated a scope for further enhancing the exchange with national administrations on the implementation and compliance with the existing provisions. In this context, the EMSA visits to Member States have proven particularly valuable in monitoring the implementation of Directive 98/41/EC but also helping with exchange of best practices and technical expertise. Such visits form part of the EMSA's mandate and present core tasks planned in its annual work programmes.

It is envisaged that in course of 2016 and 2017, a new model for the planned cycle of EMSA visits to Member States would be prepared to verify implementation of EU passenger ship safety legislation (i.e. Directives 2009/45/EC, 2003/25/EC, 1999/35/EC and 98/41/EC). The new cycle of EMSA visits on PSS legislation should be foreseen to start in 2018 at the earliest. In view of the above and taking into account that the full cycle of EMSA visits is estimated to last 5 years, the evaluation cycle of the EU passenger ship safety legislation should be set at 7 yearly interval.

Annex 1: Summary of targeted consultation on the simplification of EU passenger ship safety legislation

The objective of this consultation targeted at members of the Passenger Ship Safety Expert Group was to support the Commission, assisted by the European Maritime Safety Agency, in the concrete formulation of the envisaged simplification proposals, particularly as regards the technical definitions and the clarity of the legal drafting. The results formed a basis for the discussions that took place during the meeting of the Passenger Ship Safety Expert Group, on 2 February 2016.

Consultation period

Given that the results and recommendations of the fitness check have been fully disseminated and the proposals were built primarily on the data collected during the REFIT fitness check process, the national administrations had 6 weeks to provide their replies. The deadline was set on 26 January 2016 to allow the Commission to process the results and inform the experts on 2 February 2016 on the outcome of the consultation and any issues that were raised for discussion.

Format and process followed

The questionnaire consisted of three main parts. Each one of the sections was dedicated to one Directive, therefore Part A contained all the questions relevant to Directive 98/41/EC, Part B addressed the proposed amendments regarding Directive 1999/35/EC and, finally, Part C followed the same pattern for Directive 2009/45/EC.

All the contributions were submitted through the online questionnaire, accessible via a link distributed to every Member State individually. As the working language of the Expert Group is English, the questionnaire was only available in English and, therefore, the same applies for the language of the present summary of the replies that have been received.

Results – EU Member States

Replies were provided in total by 20 countries, consisting in particular of 19 EU MS and Norway. More specifically, BE, CY, DE, DK, ES, FI, FR, IE, IT, LT, LV, MT, NL, PL, PT, SE and UK participated to the consultation and agreed to be referred to in the Staff Working Document under their identity as a contributing MS. Two MS objected and will be referred to in an anonymous form. Finally, Norway also provided its feedback; however, an overview of the replies provided by Norway will be reported under a separate heading. Their input has been assessed and taken into consideration, but it has not been included in the statistics that will be presented below. These have been limited to the feedback provided by the EU Member States.

The results are presented on a question by question basis, following the same order as in the questionnaire. The focus is on the presentation of the statistics, while the specific comments

and clarifications that several MS provided, as well as specific concerns, are addressed in the relevant parts of the Staff Working Document.

A. Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community:

Question 1 put forward the proposal for the clarification of the scope of Directive 98/41/EC, by aligning the definition of the 'passenger ship' across the PSS legislation, and more specifically with the definition found in Directive 2009/45/EC. Moreover, in parallel it was suggested to clarify in Article 3 that Directive 98/41/EC does not apply to passenger ships exclusively engaged in a 'port area', as defined in Article 2(r) of Directive 2009/45/EC. All Member States, with the exception of IE, agreed with the proposal to streamline the scope and definitions of the existing PSS legal framework.

1. Definition of sea-going ships		Answers
Yes		18
No		1
No opinion		0

The alignment of the existing legal regime was also the basis for the proposal of question 2, which was supported by 15 Member States. The replacement of the references to 'protected sea area' throughout the Directive by a reference to 'sea area D, as defined in Directive 2009/45/EC', was not accepted by DE and FR, while IE and one MS, raised the issue of the importance of maintaining the reference to 'the proximity of search and rescue facilities is ensured', due to its relevance for this Directive in particular.

2. Definition of protected sea area		Answers
Yes		15
No		4
No opinion		0

Question 3 aimed in replacing the reference of Article 9(4) to an 'area where the annual probability of the significant wave height's exceeding two metres is less than 10 %' by a reference to sea area C , as defined in Directive 2009/45/EC. The majority of Member States (15) agreed with the replacement, which also serves the purpose of the alignment with the existing PSS legislation. DE, FR, IT and one MS objected on the grounds of the difference between the scope of the two Directives, the existing possibility to grant exemptions and potential of further clarification of the definition.

3. Definition of sea area in Article 9(4)		Answers
Yes		15
No		4
No opinion		0

Question 4 proposed a clarification of the 'more than twenty miles from the point of departure' element of Article 5(1) of the Directive, which requires certain information on persons on board to be recorded for such voyages. The proposed clarification was to include 'actual distance sailed by the ship from the port of departure to the next port of call' and it was supported by 14 MS, while DK, IE, IT, NL and UK proposed some alternative wordings, due to the potential ambiguity the proposed amendment may also entail.

4. Definition of 20 nm threshold		Answers
Yes		14
No		5
No opinion		0

On the transmission of the number of the persons on board, the first part of question 5 contained the proposal to replace the references to 'company's passenger registrar' and to 'a shore-based company system' in Article 4(2) by a reference to the National Single Window, as established by Directive 2010/65/EU. 8 Member States disagreed (DE, DK, ES, FR, IE, MT, UK and one MS), while a total of 11 Member States supported the proposal. The main elements of concern were the additional burden for small operators and the maturity of the NSW. An alternative was also suggested by IE towards maintaining the obligation to report electronically, but through a different system, the AIS.

5a. Recording number of persons on board in NSW		Answers
Yes		11
No		8
No opinion		0

On the question of the potential negative impact of this proposal on operators, in particular to those operating ships below 300 GT, the majority of Member States agreed that no significant negative impact is to be expected (12 in total, i.e DE, DK, ES, FR, IE, IT, MT, NL, PL, SE, UK and one MS), 6 Member States disagreed and CY gave no opinion on the matter. Comments related to the need for additional expenses for small operators towards securing internet connection (IE, UK) and other additional expenses.

5b. Impact of recording number of persons on board in NSW		Answers
Yes		12
No		6
No opinion		1

Some comments were also received on the proportionality of the measure in view of the search and rescue needs, which was addressed on the last part of question 5. From the feedback received, the issue of the small operators (IE, SE, FR, UK) was again raised as the main concern. Moreover, DK and NL mentioned the efficiency of the current system in place (option to have paper-based passenger lists) and the need to be maintained as an alternative. IE underlined the need to consider alternatives to the NSW, such as the AIS.

Regarding the transmission of the passengers lists, it was proposed to replace the references to 'company's passenger registrar' and to 'a shore-based company system' in Article 5(2) of the Directive by a reference to National Single Window as established by Directive 2010/65/EU. The proposal was supported by 13 MS, while 6 (DE, DK, IE, MT and one MS) expressed a number of concerns regarding the implementation of this measure at this moment.

6a. Recording passenger and crew lists in NSW		Answers
Yes		13
No		6
No opinion		0

Due to the difference in the operators that are concerned by this measure, there was a similar but not identical feedback on the impact. From the replies that have been provided, 9 Member States agreed that there will be no significant impact (CY, ES, FI, FR, IE, LV, PT, SE and one MS), 8 disagreed (BE, DE, DK, IT, MT, NL, PL and UK) and two Member States expressed no opinion on the issue.

6b. Impact of recording passenger and crew lists in NSW		Answers
Yes		9
No		8
No opinion		2

Question 7 addressed the obligation under Article 5(2) for communication of the list of passengers and crew 'no later than thirty minutes after the passenger ship's departure'. Aiming to align the time at which the number and information on persons on board can be accessed in case of an emergency, the proposal was to record the lists of passengers and crew in the National Single Window 'before departure' (i.e. up to the point of departure). There was an overall support of the proposal by 12 Member States. 7 Member States replied negatively (DE, DK, FI, FR, IT, MT and one MS) and mainly agreed with the importance of immediate communication, but underlining at the same time the need to retain certain flexibility due to last minute boarding, cross checking of the lists etc. Some alternative wordings were proposed in that respect.

7. Delay in recording passenger and crew lists		Answers
Yes		12
No		7
No opinion		0

Regarding the personal data collection from the passenger and crew lists Article 8 requires that the company should not keep the data collected longer than necessary for the purposes of this Directive. It has been noted that the implementation of this requirement differs across Member States. It was not proposed to change the status quo. The vast majority of Member States agreed to this proposal, with the exception of IT.

8. Data retention and access		Answers
Yes		18
No		1
No opinion		0

In order to align the definition of 'passenger registrar' with the amendments above, question 9 proposed to replace the title of Article 2 'passenger registrar' by 'designated person ashore' and in parallel replace his responsibility for 'keeping' the information by 'recording' it in the National Single Window. A majority of Member States (14) agreed with the envisaged amendments, however, 5 Member States expressed their opposition (DK, FI, IE, MT and one MS).

9. Passenger registrar		Answers
Yes		14
No		5
No opinion		0

Question 10 suggested amending Article 10 by removing the requirement to 'approve' the registration systems and replace it by a requirement to 'verify' the accuracy and timeliness of recording the data (and to carry out random checks for this purpose, as required in the second paragraph of Article 10), while retaining the principle of self-declaration of passenger information for voyages longer than 20 nm. The majority of Member States agreed with the proposal, with only 2 Member States expressing concerns (DK and one MS) and BE declaring no opinion.

10. Approval of registration systems		Answers
Yes		16
No		2
No opinion		1

The majority of Member States (15 in total) agreed with the proposal to include information on nationality in Article 5(1) on the basis of self-declaration and to improve the effectiveness of search and rescue operations. Two Member States expressed no opinion on the proposal (BE an one MS) and two MS opposed, DK on the basis of potential additional administrative burden and DE by questioning the improvement that this could potentially bring in the search and rescue operations.

11. Nationality		Answers
Yes		15
No		2
No opinion		2

Finally, in question 12 Member States had the opportunity to raise issues that were not addressed in the proposal and make other suggestions for removing outdated references, ambiguities or overlaps in the Directive. Input to that respect was provided by IT, PL and PT and was examined by the Commission as appropriate.

B. Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services:

Question 1 contained the proposal for the vessels operating domestically. The main aim was to transfer the requirements of Directive 1999/35/EC to Directive 2009/45/EC, clarifying that one of the two annual ro-pax surveys (namely the specific 'in-port' survey according to Annex III Directive 1999/35/EC) can be carried out as part of the annual flag State survey, under certain circumstances. The majority of Member States agreed with the proposed combination of the surveys that are contained in the two Directives, however, due to the different scope and difficulties that may arise in the implementation of this merger, 4 Member States (DK, IE and 2 MS) expressed their concern and BE and DE stated they have no opinion on the proposal.

1. Vessels operating domestically		Answers
Yes		13
No		4
No opinion		2

Question 2 contained the proposal for the vessels subject to port State control. The main aim was to transfer the requirements of Directive 1999/35/EC to Directive 2009/16/EC, clarifying that both annual surveys shall be carried out as expanded port State control inspections. This may be the case only when ensuring that these vessels qualify for an expanded port State control inspection when they commence a service ('initial' survey) and thereafter twice per year (i.e. altering the ship risk profile and priority for these vessels in the annexes to Directive 2009/16/EC). A similar input in terms of the overall statistics was received, with almost the same Member States disagreeing with the proposed merger (DK, IE, ES and a MS). DE and one MS provided no opinion.

2. Vessels subject to port State control		Answers
Yes		13
No		4
No opinion		2

Question 3 addressed the issue of vessels operating between an EU MS and a third country where the flag of the vessel is the same as that of the MS. Given that these vessels fall neither within the scope of PSC nor Directive 2009/45/EC, the questionnaire proposed two alternatives. The first was to retain the requirements in Directive 1999/35/EC but clarify that

one of the two annual ro-pax surveys can be carried out as part of the annual flag State survey under the same conditions of those indicated for vessels operating domestically. This approach was supported by 7 Member States (IE, IT, LT, LV, NL, PL and one MS). As an alternative, the second proposal was to transfer the requirements to Directive 2009/21/EC (the Flag State Directive).This approach would allow repealing Directive 1999/35/EC. The second alternative was preferred by 8 Member States (CY, DE, ES, FI, FR, PT, SE, MT), while 4 Member States expressed no opinion (BE, DE, UK and one MS).

3. Vessels operating between an EU MS and a third country where the flag of the vessel is the same as that of the MS		Answers
Keep the requirements in Directive 1999/35/EC		7
Transfer the requirements to Directive 2009/21/EC		8
Other alternative		0
No opinion		4

Question 4 tackled the issue of the objective behind Article 8 of Directive 1999/35/EC that indicates that every 12-month period a specific survey and a survey during regular service must be carried out by host States. Although the aim was to ensure that these two inspections are carried out with a certain time lag, i.e. 5-6 months, this has not always been the case in practice. Therefore, it was proposed to clarify that the two annual inspections should take place at regular, approximately six monthly intervals. The majority of Member States supported this proposal as a positive clarification. DE provided no opinion and 4 Member States (BE, DK, ES, IE) expressed some concerns regarding vessels at seasonal service.

4. Regularity of inspections		Answers
Yes		14
No		4
No opinion		1

There was an agreement among Member States on the proposed replacement of the concept of the host State by the port State (for vessels subject to port State control) or by the flag State (for vessels not subject to port State control). Directive 1999/35/EC in Article 2(k) defines host State, however, this concept was introduced by this Directive to facilitate the cooperation with non-EU Member States prior to the 2004 EU enlargement and is no longer relevant in

practice. Only IE disagreed, considering that it is important to be kept for the purposes of Directive 1999/35/EC. DE and ES were of no opinion.

5. Outdated concept of host State		Answers
Yes		16
No		1
No opinion		2

Most Member State agreed with the proposal of question 6, to remove the requirement of Article 11 to carry out joint surveys by default and to replace by a possibility to do so, i.e. when requested, port State, flag State or a third-country of destination (as appropriate). DE did not provide an opinion on the proposal and two Member States disagreed (IE and one MS).

6. Joint surveys		Answers
Yes		16
No		2
No opinion		1

Directive 1999/35/EC refers to 'surveys' rather than 'inspections'. To ensure the correct use of terminology, question 7 proposed replacing the term 'survey' by 'inspection' when referring to specific ro-pax surveys as currently provided for in Directive 1999/35/EC. The majority of Member States agreed with this proposal and only two Member States (DE and one MS) abstained from providing an opinion on the suggested amendment.

7. Survey vs inspection		Answers
Yes		17
No		0
No opinion		2

There was the same level of positive feedback on the proposed amendment of Annex IV of Directive 1999/35/EC, which refers to 'indicative guidelines'. Article 8 refers to Annex IV as a mandatory part of the 'in-service' surveys and therefore cannot be considered to be indicative. For the sake of legal clarity, it was proposed to remove the reference to 'indicative guidelines'

from Annex IV without any replacement. Only DE and one MS expressed no opinion on the proposal.

8a. Indicative guidelines		Answers
Yes		17
No		0
No opinion		2

On the second part of question 8, given that Annex IV of Directive 1999/35/EC also refers to 'unscheduled' surveys and the Directive provides for 2 annual inspections carried out in regular intervals, the notion of 'unscheduled' surveys shall be interpreted as 'unannounced' surveys. Several alternatives were proposed to that respect, with the majority of Member States being positive in retaining the possibility of 'unannounced' inspections. Two Member States underlined the difficulty of organising 'unscheduled' surveys that are indeed unannounced.

From the alternatives that were proposed, IE, LT and SE preferred to replace the notion of 'unscheduled' surveys in Annex IV by 'unannounced' surveys, de facto making these surveys always unannounced. DK, ES, NL and one MS selected to remove the notion of 'unscheduled' surveys from Annex IV without any replacement and the majority of the MS (BE, CY, FI, FR, IT, MT, PL, PT, RO, UK) preferred the alternative to remove the notion of 'unscheduled' surveys from Annex IV and replacing it by a requirement that such surveys shall be occasionally carried out in an unannounced manner. DE expressed no opinion on the alternatives proposed and LV suggested an alternative wording for the third proposal emphasising that such surveys 'may (could)' be occasionally carried out in an unannounced manner, instead of 'should'.

8b. Unscheduled surveys		Answers
To replace the notion of 'unscheduled' surveys in Annex IV by 'unannounced' surveys		3
To remove the notion of 'unscheduled' surveys from Annex IV without any replacement		4
To remove the notion of 'unscheduled' surveys from Annex IV and replacing it by a requirement that such surveys shall be occasionally carried out in an unannounced manner		10
Other alternative		1
No opinion		1

As regards the 'in-service' survey (i.e. a survey during a regular service), as defined in Article 8, the wording of the Directive leaves certain ambiguity as regards whether this survey should be carried out when the ship is sailing or whether this survey can be carried out in port. To remove this ambiguity question 9 contained the proposal to clarify that 'in-service' surveys shall be carried out in accordance with Annex IV and, in addition, must include items from Annex I and III selected by the national administration to ensure that the ferry or craft continues to fulfil all the necessary requirements for safe operation. There was wide support on this clarification by 16 Member States, while PL proposed an alternative wording and DE expressed no opinion. DK disagreed with the proposed formulation and expressed preference towards maintaining the current wording.

9. Content of 'in-service' survey		Answers
Yes		16
No		2
No opinion		1

Articles 4 and 5 of Directive 1999/35/EC provide for specific requirements related to 'initial verifications' in relation to vessels, companies and flag States. Given that these provisions have been either superseded by other legislation (i.e. accident investigation) or the proposed alignment with the port/flag State responsibilities and are already embedded in the initial surveys mandated by Article 6, it was proposed to remove these two Articles in their entirety. A total of 16 Member States agreed with the intended simplification with FR and IE expressing their disagreement and DE having no opinion on the proposal.

10. Initial verifications		Answers
Yes		16
No		2
No opinion		1

Finally, in question 11 Member States had the opportunity to raise issues that were not addressed in the proposal and make other suggestions for removing outdated references, ambiguities or overlaps in the Directive. Input to that respect was provided by DK, regarding more meetings on the NSW, IE on ISPS and Regulation 725/2004/EC and PL with the provision of a list of repealed legislation. All suggestions were examined by the Commission as appropriate. DE reserved its position on the possibility to provide feedback later on some of the issues.

C. Directive 2009/45/EC on safety rules and standards for passenger ships:

The first part of the questionnaire for Directive 2009/45/EC focused on the clarification, alignment and simplification of a number of definitions that appear in the Directive and have been considered of ambiguous nature, thus also complicating the scope of its application.

In question 1 it was proposed to clarify in Article 3 (2) that Directive 2009/45/EC does not apply to 'offshore supply vessels' as defined in the IMO OSV Guidelines, 2006, as amended. The majority of Member States agreed with the proposed clarification while 5 Member States (DK, FR, IE, NL and UK) opposed to the proposal by either suggesting alternative wording or underlining potential unintended implications.

1. Offshore supply vessels		Answers
Yes		14
No		5
No opinion		0

The first part of question 2 aimed at the clarification of the definition of traditional ships. In Article 3(2a)v, Directive 2009/45/EC excludes 'original, and individual replicas of, historical passenger ships designed before 1965, build predominantly with the original materials'. On the other hand, Directive 2002/59/EC also includes a definition of traditional ships. For the sake of consistency and legal clarity, it was proposed to align these two definitions and the questionnaire proposed two alternative wordings to that respect.

The views among the MS were split with 7 Member States (CY, FR, MT, NL, PL, SE and one MS) opting for the proposed complete alignment with the definition of Directive 2002/59/EC, while 8 Member States (BE, ES, FI, IT, LT, LV, PT and UK) preferred the alignment while retaining the age and the materials. Two Member States provided no opinion (DE and one MS) while DK opposed to the necessity of changing the current text and IE proposed an alternative.

2a. Traditional ships		Answers
Define traditional ships according to Directive 2002/59/EC		7
Define traditional ships according to Directive 2002/59/EC and retain the age (designed before 1965) and the materials (built predominantly with the original materials) criteria		8
Other alternative		2
No opinion		2

The second part of question 2 focused on the need to clarify the coverage of rig-sailing passenger ships. Although the Directive explicitly excludes passenger ships not propelled by mechanical means from its scope (Article 3(2a)ii), these ships usually have an auxiliary diesel engine capable of propelling the ship if needed. It was therefore proposed to clarify that Directive 2009/45/EC does not apply to 'sailing ships', defined as 'ships primarily propelled by sails and usually fitted with mechanical propulsion for auxiliary and emergency purposes'. The majority expressed their agreement with the envisaged clarification and proposed alternative wordings towards achieving more clarity, especially with respect to the auxiliary propulsion element of the definition. DE, DK and IE expressed their disagreement with the suggested definition and BE provided no opinion in this issue.

2b. Sailing ships		Answers
Yes		15
No		3
No opinion		1

The proposal also aims in clarifying Articles 3(2a)vi and 3(2b)ii (i.e. ships outside its scope), where Directive 2009/45/EC refers to pleasure 'yachts' and pleasure 'craft' with neither of them being defined in the Directive. It is therefore proposed to define that 'pleasure yachts and craft' mean 'all kinds of ships or craft intended for sports and leisure purposes, regardless of the means of propulsion, unless they carry more than 12 passengers' for commercial purposes. The majority of Member States supported this proposal with some alternatives wordings being suggested for clarity purposes. 3 Member States (IE, MT and UK) disagreed with the proposed text.

3. Pleasure yachts/craft		Answers
Yes		16
No		3
No opinion		0

Question 4 aimed to clarify the scope of the Directive by addressing the issue of tenders, which, as cruise ships have increased in size, they have also increased in some cases to over 300 passengers. It was proposed to clarify that tenders are excluded from the scope of Directive and to define 'tenders' as 'ship-carried boats used for transferring more than 12 passengers from a stationary passenger ship to shore and back, certified either as lifeboats or

passenger ships of like size and service to the tender'. The majority of Member States agreed with the above formulation, with 15 expressing their support and proposing potential alternative wordings that could be followed. MT did not provide with an opinion while 3 Member States (DE, DK, IE) expressed their disagreement.

4. Tenders		Answers
Yes		15
No		3
No opinion		1

According to Article 3, Directive 2009/45/EC does not apply to 'vessels constructed in material other than steel or equivalent'. Although the main body of the Directive does not define what such 'equivalency' stands for, in Chapter II-2 of Annex I, the Directive defines requirements for cases 'where any part of the structure is of aluminium alloy, the following shall apply'. Having acknowledged that the corresponding definition in Chapter II-2 of Annex I may create an impression of ambiguity as regards the coverage of non-insulated (or not sufficiently insulated) aluminium built ships and noting that not all Member States apply the Directive in the same manner; it was proposed to clarify and amend the definition of equivalency, while allowing sufficient phase-in period for the aluminium ships currently not certified under the Directive. The majority of Member States agreed with the proposed clarification and welcomed the amendment, proposing in parallel some alterations and alternative wordings. One Member State provided no opinion and FR, IT and LV disagreed with the proposed formulation; FR underlining the impossibility to upgrade existing vessels to the existing requirements of the Directive.

5a. Aluminium built ships		Answers
Yes		15
No		3
No opinion		1

In order to achieve the maximum level of clarity, the questionnaire was open to input from Member States regarding circumstances in which the Directive's fire insulation requirements were found impracticable or ambiguous. The questionnaire was also open to proposals for their clarification. 6 Member States (ES, FR, IE, IT, SE and UK) responded positively and provided additional information and suggestions for improvement. PT and two other Member States did not provide an opinion on this issue.

5b. Aluminium built ships – identified ambiguities		Answers
Yes		6
No		10
No opinion		3

Regarding the definition of the sea areas C and D, which is currently based on three different parameters, the proposal suggested removing the redundant or overlapping elements. These elements are the reference to 'where the shipwrecked persons can land' and the reference to the 'place of refuge'. The majority of Member States, 13 in total, agreed with the proposed simplification, however 6 Member States disagreed (BE, DE, PL, SE, UK and one MS). There was an agreement among Member States to remove the reference to shipwrecked persons, however, PL, SE and UK opposed the removal of the reference to the places of refuge and UK also proposed the removal of the reference to significant wave height.

6a. Definition of sea areas		Answers
Yes		13
No		6
No opinion		0

The questionnaire also addressed the issue of the potential impact of the proposed simplification on the current delimitations of sea areas with 7 Member States replying positively (DE, NL, PL, PT, SE, UK and one MS), 9 Member States negatively (BE, CY, DK, ES, FI, FR, IE, IT and LV) and 3 Member States (MT, LT and one MS) expressing no opinion. Specific examples were provided as feedback to that respect.

6b. Impact on sea areas demarcation		Answers
Yes		7
No		9
No opinion		3

On ships below 24 m in length the majority of Member States agreed with the proposal to exclude them from the scope of Directive 2009/45/EC. There was disagreement from DE, IE and IT who preferred maintaining the current situation.

7. Ships below 24 m in length		Answers
Yes		16
No		3
No opinion		0

The majority of Member States, 17 in total, agreed with the need to reformat Annex I of the Directive that contains the currently applicable technical requirements, acknowledging that with the adoption of SOLAS 2009, the numbering and the format of the corresponding Regulations have significantly changed. The UK did not provide an opinion regarding the present proposal while DE disagreed on the ground that there are deviations between the requirements in the Directive and those to be found in SOLAS.

8. Format of Annex I		Answers
Yes		17
No		1
No opinion		1

On the reporting of exemptions/equivalencies etc., Directive 2009/45/EC (and in principle also Directive 98/41/EC) define a sui generis notification procedure that is rather lengthy. In addition, there is no database where such measures would be recorded and made available to all Member States and operators for their consideration. Therefore, it was proposed to mandate the Commission to set up and maintain a database (possibly through CIRCA) containing the notifications and information provided by Member States under Article 9 (1, 2 or 3); indicate that such database would serve the purpose of informing other Member States as foreseen in Article 9 (4); and specify that condition of access to the database shall be decided with the assistance of the Committee (COSS). MT disagreed due to the potential additional burden that this would impose and UK, LT and one MS expressed no opinion on the proposal. However, the majority of Member States welcomed this proposal.

9. Notification tools		Answers
Yes		15
No		1
No opinion		3

Finally, in question 10 Member States had the opportunity to raise issues that were not addressed in the proposal and make other suggestions for removing outdated references, ambiguities or overlaps in the Directive. Input to that respect was provided by DK, FI, FR, NL, UK and one MS, all of which were taken into consideration as relevant.

Norway

Replies on the questionnaire were also provided by Norway and can be briefly summarised as follows, according to the proposed amendments for each Directive.

Regarding Directive 98/41/EC, there was general support to the proposals, especially regarding the scope of the Directive (question 1) and the clarification of the definitions and references to 'protected sea area' (question 2), 'sea area C' (question 3) and the measurement of the distance from the point of departure (question 4). In the same lines there was a suggestion to remove the reference to 'including in its archipelagic sea areas' from Article 9(3) due to the potential of causing inconsistencies.

There was disagreement on questions 5 - 6 and the proposal to replace the reference to 'company's passenger registrar' by a reference to the NSW (both for the number of passengers and the passenger lists), on the ground that the shore based system currently in place is functioning well, especially on short crossings. They also highlighted the potential impact on small operators.

NO expressed its support on the suggestions regarding the time the lists of passengers need to be communicated (question 7). There was also an agreement with respect to the time period

the personal data is permitted to be kept and the circumstances under which they should be made available to the competent authorities (question 8). Regarding the passenger registrar, NO expressed no opinion on the proposal of question 9 (replacing passenger registrar by designated person ashore), but agreed with the suggestion to remove the requirement to approve the passenger registration systems by a verification of accuracy and timeliness of recording the data. The same applies with respect of the proposal of introducing nationality as mandatory information to be registered for persons on board.

Regarding Directive 1999/35/EC, there was an overall support and agreement with the suggested proposals. More specifically, regarding the potential transfer of the requirements of Directive 1999/35/EC, for vessels operating domestically, to Directive 2009/45/EC (question 1) and for vessels subject to Port State Control, to Directive 2009/16/EC (question 2), NO expressed their agreement. For the vessels operating between EU MS, NO selected the alternative of keeping the requirements in Directive 1999/35/EC (question 3).

In general, there was an agreement regarding the proposals on the interval between the surveys (question 4), the abolition of the host state concept (question 5), the removal of the requirement of carrying out joint inspections and replacement by a possibility to do so (question 6) and the replacement of the reference to surveys, by a reference to inspections (question 7). On the discussion and relevant proposals of question 8, which covers the issue of the 'indicative guidelines' and 'unscheduled surveys' of Annex IV, on the former NO agreed with proposal to remove the reference to the guidelines without any replacement, while on the surveys they proposed the alternative to replace the wording should with "inspections" rather than "surveys". Finally, on question 9, they agreed with the clarification on 'in-service surveys'.

With respect to Directive 2009/45/EC, NO disagreed with the proposal regarding the clarification of the offshore service vessels and underlined that the IMO discussions need to be taken into consideration (question 1). On question 2 and traditional ships they supported the alignment of the definition with that of Directive 2002/59/EC, without including any additional elements in that definition. Support was also expressed with respect to the proposals on sailing ships (question 3) and pleasure crafts (question 4). On aluminium ships, NO agreed with the amendments that were proposed, however, acknowledged that ships that have been built according to different rules than those under the Directive will have difficulty to comply with the proposed amendment (question 5). No specific circumstances of impracticability were identified by NO. There was also a positive input on the clarification of the definition of sea areas (question 6), the exclusion of ships below 24m (question 7) and the reporting of the exemptions (question 9), while they expressed no opinion on the reformatting of the Annex (question 8).

Annex 2: Summary of the PSS Expert Group meeting on the simplification of EU passenger ship safety legislation

BRUSSELS, 2 February 2016

1. Introduction

Following the welcome, and approval of the agenda, the chair (Ms. C. Berg, Head of Maritime Safety Unit, DG MOVE) briefly presented the actions to be taken in the following months as a follow-up to the REFIT fitness check on EU passenger ship safety legislation. The intention is to finalise the legal proposals for the simplification of the PSS legislation as soon as possible, in order for the negotiations to begin still under the NL presidency. Afterwards, stakeholders will be invited to express their interest in participating in the Passenger Ship Safety Expert Working Group as observers. The first joint meeting of the expert group with observers is foreseen to take place after summer (September/October 2016).

The Chair recalled that the main objectives of the meeting was to: (1) present the results of the questionnaire on the simplification of the EU passenger ship safety legislation; (2) prepare the proposals for the EU passenger ship safety legislation (with focus on key measures highlighted in the previous point); and (3) discuss next steps.

2. Results of the questionnaire on the simplification of the EU passenger ship safety legislation

The Chair underlined that the timely submission of the replies and comments was highly appreciated and that there had been a good response both in terms of the number of the administrations that had replied and in terms of the comments received. Regarding the statistics presented (i.e. how many Member States agreed, disagreed or expressed no opinion on a given proposal), it was highlighted that the results were automatically generated by the system, at face value (i.e. conditional replies not taken into account, no weighting, etc.).

3. Preparation of the forthcoming proposals for the EU passenger ship safety legislation

The Chair recalled that the main aim of the meeting was to get further insights in some of the issues raised by Member States in the questionnaire and to discuss alternative wordings proposed. It was however not intended to start negotiating on the envisaged measures. Following issues were discussed in more detail:

A. Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community

Some Member States questioned using National Single Window (NSW) as the (only) tool to communicate the number of persons on board to the system accessible to search and rescue

authorities. The Chair recalled the obligation for all Member States to have the NSW operating already since June 2015. Notwithstanding the delays in its implementation, by the time the proposed amendments will enter into force (possibly 2019/2020), the system will be fully operational.

The discussion then focused on using Automatic Identification System as an alternative tool for communicating the number of persons on board, as proposed by one Member State during the consultation and as noted in the REFIT fitness check conclusions. The advantage of this option would be a minimal investment with significant safety benefits. Higher transparency on the availability of the number of persons on board was considered to be an important side benefit. Moreover, an internet connection is not needed and passenger vessels already have an obligation to carry an AIS device on board irrespective of their size (unless Member States have used the possibility to exempt them from such obligation).

From the technical perspective, it was clarified that there is a space for the number of persons on board in the AIS message. Experts then exchanged experience with already using AIS for such purposes, the prime example cited by the UK being very short voyages of a few minutes on the River Thames.

A number of experts supported the proposal and welcomed having an alternative to the NSW, which is especially important for small operators. Comments were made concerning the functioning of AIS as a pre-programmed device and the fact that old devices may need to be upgraded for such purpose. The accuracy and reliability of the information provided by the master was also questioned, however, albeit in this respect there would be no change compared to status quo.

Some experts also highlighted the fact that Member States have a possibility to grant exemption from the obligation to carry AIS to passenger ships of under 300 GT (Annex II/I-2 of Directive 2002/59/EC). These Member States would need to revisit and justify their decision accordingly unless exemptions are in one way or another retained. However, on the basis of experience with using AIS for this purpose (as a widely accessible and non-expensive tool), it was questioned whether such exemptions remain justified.

Finally, in response to several comments regarding the scope of the Directive's applications (e.g. fjords or archipelago), the Chair recalled ancillary clarifications and the fact that the inner limit of sea area D remains within the discretion of Member States to define.

B. Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services

The Chair underlined that the aim is to simplify the current requirements and to adjust the inspection regime according to the implementation experience. Specific questions were addressed to experts, namely regarding the possibility for joint inspections and carrying out 'in service' inspections at sea.

Some experts highlighted that while they in principle agree with the simplification approach, more discussion would be needed on the more detailed, operational aspects of putting the suggested amendments into place and there were calls for a dedicated workshop to be organised with the experts concerned (inspectors, surveyors). This would allow achieving a common interpretation of the provisions. The Chair underlined that such a workshop could be organised with the assistance of EMSA once the simplification proposals are finalised and put

forward by the Commission (as part of the implementation plan and the preparation of the necessary implementing acts).

Germany made an information point and informed the Commission that while at the time of submitting the replies to the targeted questionnaire they were not yet able to respond to questions related to Directive 1999/35/EC, they support the proposed measures. More specifically, Germany supports removing the notion of 'unscheduled' inspections from the Title of Annex IV without any replacement.

Finally, experts underlined the difference between Directives 2009/45/EC and 1999/35/EC and consequently the need for an independent inspection under Directive 2009/45/EC, due to the fact that it may be delegated to recognised organisations. In such cases coordination with the recognised organisations would be required.

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

EMSA presented the planning for simplifying the Annex (in view of its adoption as soon as the amended Directive enters into force). The Chair reminded experts that during the last meeting of the Committee (COSS), there was an agreement on the amendment of the existing Annex, which is currently under the 3 month scrutiny period and will enter in force in 2018. The discussion followed on the timing of the proposed changes and the fact that the simplified Annex should in principle be put forward in the form of a Regulation to reduce the transposition burden for national administrations. In addition, transitional period would be foreseen. Several issues were discussed in detail:

a) Sea areas simplification

All experts agreed that the reference to 'where shipwrecked persons can land' should be removed from the definition of sea areas C and D. Regarding the distance to a place of refuge, where this criterion is used experts called for retaining it. It was noted that the notion of place of refuge should be reflected on a case-by-case basis for each ship when the operational/navigation elements are decided upon. A more general discussion took place on the other criteria such as the significant wave height (not included in the simplification proposals) where divergent opinions have been expressed on its use and added value.

b) Specific ship types

On the proposal to clarify the definition of traditional ships, some experts emphasised the importance of clarifying the definition. Moreover, regarding sailing vessels, a preference towards their exclusion emerged during the meeting. Clarification was asked regarding the pleasure craft definition and divergent views expressed towards excluding tenders from the scope of the Directive.

Regarding aluminium vessels, the issue was addressed by some of the experts and references were made to the replies provided in the questionnaire. The Chair recalled that the current safety level cannot be comprised, a transitional period should be provided and the technical requirements clarified, taking the consultation feedback as a starting point.

c) Other issues

Another issue of safety concern was raised with respect to the current wording of the Directive that may be ambiguous when cargo ships are converted into passenger vessels (and

should therefore fulfil the requirements for a "new" passenger vessel). In addition, the attention of the Commission was drawn to a possibly incorrect wording in the Annex concerning lifesaving appliances.

5. Next steps

The Chair summarised and presented the next steps. Once the simplification proposals are finalised and adopted by the Commission, the work on the new format of Annex to Directive 2009/45/EC will start immediately (including via a correspondence group) and a dedicated workshop will be organised by EMSA. Furthermore, the PSS Expert Group will be enlarged to observers (a call for the expression of interest should be launched still this spring so the next meeting of the PSS Expert Group planned after summer can already take place in the enlarged setting).

In the second phase of the REFIT fitness check follow-up and as announced in the Commission report (COM(2015)508), preparatory work will start on developing guidelines or a code for small vessels, based on functional requirements. Finally, depending on the results of the negotiation at international level concerning the damage stability requirements, a study will be launched to support the review of Directive 2003/25/EC.

6. AOB

On the question regarding the form of the legislative proposals, i.e whether all revised Directives will be amended in one text or separately, the Chair replied that no final decision has been taken in that respect, however, the intention is to avoid having one single amending proposal, because this would lead to a massive technical text that would be impossible to handle and would not be in line with the principles of clear legal drafting.

Finally, a request was addressed to the Commission whether all individual replies to the targeted questionnaire can be distributed among the PSS Expert Group. The Chair underlined that comments provided by the participants of the questionnaire will be reflected in the Staff Working Document accompanying the simplification proposals and recalled the specific privacy statement for the targeted consultation, according to which it was not envisaged to publish the received contributions on the internet in their entirety. Member States could opt for their contribution to be referred in an anonymous form.

Annex 3: Summary of the workshop on the simplification of EU passenger ship safety legislation

BRUSSELS, 2 February 2016

Represented bodies: CLIA, Sea Europe, European Boating Industry (EBI), IACS, ECSA, Interferry, SOS Catastrophes

Following the completion of the REFIT exercise and to pave the way for finalising the simplification proposals, the Commission in the framework of the targeted consultation organised a stakeholder workshop. The basis for the discussion was the Roadmap 'REFIT legislative review simplifying the EU passenger ship safety legislation' and the forthcoming simplification measures.

The meeting was opened and chaired by Ms C. Berg, Head of Unit of DG MOVE D.2 Maritime Safety, who explained the context of the REFIT Fitness Check in the area of passenger ship safety. The Chair presented the overall framework and objectives of EU passenger ship safety legislation, highlighting the differences between regulation at international and EU level. Subsequently, the Chair briefly presented the main results of the fitness check and follow-up actions to be carried out in two phases. In the first phase, a number of simplification proposals will be put forward by the Commission, the preparation of which is the topic of this meeting. In the next phase, further actions will concern the review of Directive 2003/25/EC (the Stockholm agreement) and the development of the Small Craft Code/Guidelines. For this purpose, the current Passenger Ship Safety Expert Group will be enlarged to observers and all stakeholders will be invited to express their interest (call forthcoming this spring).

The general overview of the Fitness Check was followed by a detailed discussion on some of the envisaged measures, based on the questions raised by the stakeholders. The Chair also invited stakeholders to provide their feedback in writing via a response form on the published roadmap (to date, no feedback has been received).

Concrete issues raised by the participants:

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

ECSA enquired on the issue of the vessels above 24 m that are built from materials other than steel (or equivalent material) that do not currently fall under the scope of Directive 2009/45/EC. The Chair replied that the main objective is to develop guidelines based on functional requirements in cooperation with the Member States and stakeholders. These

guidelines will be considered together with the development of the Code or guidelines for vessels below 24 m (Small Craft Code).

SOS Catastrophes expressed their concern for the vessels below 24 m and the fact that, from a safety perspective, it is difficult to understand why there is no regulation for these types of ships. The Chair clarified that the majority of these vessels are already outside the scope of Directive 2009/45/EC but that does not mean that these ships are not regulated – national standards apply. SOS Catastrophes also questioned why there should be different level of safety for small ships compared to big ones. The Chair noted that in view of subsidiarity and proportionality, it is important to have EU legislation where there is an added value and potential of achieving a level playing field. More generally, applying the same requirements is almost technically impossible, hence other risk reduction measures are put in place at national level (navigational rules etc.). Furthermore, the EU liability regime is a pro-active way to address safety in an indirect manner (evaluation is currently ongoing regarding its extension to vessels sailing closer to the coast). The Chair also highlighted that Member States are positive towards achieving a common ground and a minimum level of safety for all small ships, based on functional requirements.

EBI underlined the fact that they represent the shipbuilding sector for small ships, usually below 24m and are therefore interested on the potential of developing a Small Craft Code (although their vessels mainly fall under the Recreational Craft Directive). EBI also presented some technical comments, representing the concerns of the yards on the aluminium built ships; they were invited by the Chair to submit these in writing via the feedback form on the roadmap. The main issue concerned the impracticability of retro-fitting. Moreover, EBI underlined the potential impact on the weight and consequently fuel consumption of the vessels, higher emissions and possible also less space for passengers (leading to potential shift in the choice of the building material of the vessels). In addition, EBI also proposed that smaller vessels (30-35m) should have different, shorter evacuation times and proposed that it may be helpful to limit the obligation of insulation in certain areas only, such as the engine room or areas with higher risk of fire. On the proposed clarifications of the definitions, their opinion was positive.

The Chair recalled the need to ensure harmonised interpretation of the EU legislation and to achieve a common level of safety in a reasonable timeframe. Furthermore, the shift to modern materials is in this segment already happening and is unlikely to be initiated due to the intended aluminium clarification.

In this context, EBI questioned the appropriateness of the 24 m threshold, particularly with respect to the existing aluminium vessels that are built up to 30-35 m. The Chair clarified that there is no intention to open the discussion on this threshold stemming from international regulations and that there are very few flag changes on vessels below 24m. ECSA also noted that the SOLAS is not designed for ships built entirely in aluminium and transitional period would be needed.

Finally, EBI raised the issue of appropriateness of technical standards for Class C and D vessels. In the discussion, it was noted that Class C and D ships are not necessarily small ships but also large vessels.

B. Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community

CLIA supported the proposal for the declaration of the nationality and stated that their members have already been reporting this element. ECSA also supported the inclusion of nationality of persons on board and called for retaining the principle of self-declaration. The Chair welcomed the support and explained the flexibility envisaged for smaller operators recording the number of persons on board only (via the Automatic Identification System).

On the National Single Window (NSW), ECSA suggested to wait for the full implementation and evaluation of the Reporting Formalities Directive before requiring all operators to use electronic means for recording the data. The Chair recalled that the NSW is supposed to be operational since June 2015 and, in any case, this would certainly be the case by the time the proposals enter into force.

On request of ECSA, the Chair explained the existing requirements concerning the transmission of passenger and crew lists on shore (at the latest 30 min after departure of the vessel).

ECSA also raised the current issue of recently introduced ID checks at national level in the context of the migration issue. The Chair underlined the fact that this is an exceptional situation and it should be dealt with as such. Explanations were also provided regarding the character of the measure and the notification process under the Schengen Regulation. Interferry intervened on the element of the burden of this measure which, although being a measure imposed by the government, currently falls on the operators.

On the same point SOS Catastrophes asked why in shipping there is a different logic compared to the Schengen regime of knowing exactly who is on board. The Chair explained the difference between the objective of the legislation on passenger ship safety and Schengen rules and recalled that for a safety perspective, ID verifications are not considered necessary.

C. Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services

No particular issue was raised under this Directive.