

# Targeted Consultation: Simplification of the EU Passenger Ship Safety Legislation

Fields marked with \* are mandatory.

## Introduction

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Questionnaire

REFIT follow-up: Simplification of the EU passenger ship safety legislation

Introduction

As announced in the Report to the European Parliament and the Council of 16 October 2015 ( [COM\(2015\)508](#)), the Commission is considering a simplified regulatory framework for EU passenger ship safety. This initiative is one of the immediate follow-up actions to the REFIT fitness check of the EU passenger ship safety regulatory framework. The REFIT fitness check included four EU Directives that represent a set of key safety standards and requirements for passenger ships sailing in the EU waters (i.e. Directive 2009/45/EC, Directive 2003/25/EC, Directive 1999/35/EC and Directive 98/41/EC).

The proposals for simplification build primarily on the data collected during the REFIT fitness check process, reported in the Commission Staff Working Document 'Adjusting course: EU Passenger Ship Safety Legislation Fitness Check' ( [SWD\(2015\)197](#)). As identified in the fitness check, the purpose of this simplification initiative is to remove outdated, ambiguous or unnecessary requirements and to improve the effectiveness of search and rescue operations without changing the policy objectives or the key delivery mechanisms.

Given that the fitness check identified in detail the issues for simplification and assessed the simplification potential, a fully-fledged impact assessment is not foreseen. As described in the Commission Roadmap for this initiative (available [here](#)), the measures envisaged are either not expected to generate any significant impacts (i.e. beyond those that are non-measurable such as legal clarity, certainty or simplicity) or there are no materially different solutions available. Nonetheless, in addition to the data and analysis carried out in the framework of the fitness check, the preparation of this simplification proposal necessitates an input from technical and legal experts.

### **Objective of the consultation**

The objective of this consultation targeted at members of the Passenger Ship Safety Expert Group is 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 a clear legal drafting.

The results of this consultation will serve as a basis for the discussions at the next meeting of the Passenger Ship Safety Expert Group, scheduled for 2 February 2016.

### **Consultation period**

Given that the results and recommendations of the fitness check have been fully disseminated and in view of the consultation objectives, the questionnaire should be returned by **26 January 2016**, i.e. 4 working days before the next meeting of the Passenger Ship Safety Expert Group. This will allow the Commission to inform the experts on the results of this consultation and to discuss any remaining issues. It is also envisaged that at a later stage, in-depth interviews can be organised on specific issues if needed.

### **How to submit your contribution**

The questionnaire consists of three main parts. Each one of the sections is dedicated to one Directive, therefore Part A contains all the questions relevant to Directive 98/41/EC, Part B addresses the proposed amendments regarding Directive 1999/35/EC and, finally, Part C follows the same pattern for Directive 2009/45/EC.

All the contributions shall be submitted through the **online questionnaire**, accessible via the link distributed to every Member State individually. It should be noted that the link can be accessed by more than one person. You can pause any time and continue later. You can download a copy of your contribution once you have submitted it but the questionnaire can no longer be accessed.

As the working language of the Expert Group is English, the questionnaire is only available in English. While the contributions can be submitted in all EU languages, contributions in English are most welcome, otherwise your contribution may not be translated in time for the Expert Group meeting.

Please note that if any of the corresponding mandatory fields have not been filled in, the system will redirect you to the incomplete answer before allowing submission. Please read carefully all the consultation information, including the reference documents, personal data protection rules and privacy statement before filling in the questionnaire.

### **Report on results**

The results, together with the results of a separate workshop organised back to back with the Expert Group meeting, will be summarised in the Commission Staff Working Document that will accompany the simplification proposal.

### **Protection of personal data**

[Protection of personal data](#)

### **Specific privacy statement**

It is not envisaged to publish the received contributions on the internet in their entirety. However, the Commission Staff Working Document will contain the summary of the contributions and specific issues raised together with the identity of the contributing Member State, unless the contributor objects on the grounds that such reference would harm his or her legitimate interests. In this case the contribution may be referred to in an anonymous form. Otherwise the contribution will not be reported nor will, in principle, its content be taken into account. Therefore, if you do not agree with the reporting of your feedback as described above, please opt-out where required in the relevant sections of the questionnaire.

### **Disclaimer**

Please note that this document has been drafted for information and consultation purposes only. It has not been adopted or in any way approved by the European Commission and should not be regarded as representing the views of the Commission. It does not prejudice, or constitute the announcement of any position on the part of the Commission on the issues covered. The European Commission does not guarantee the accuracy of the information provided, nor does it accept responsibility for any use made thereof.

## **Identification**

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\* Please provide your full name

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For more information on the specific privacy statement see the document below

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## 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

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\* 1. 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:

a. 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

b. In combination, remove the ambiguity in the scope of the Directive by clarifying 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 (i.e. '*an area other than a sea area, as defined by the Member States, extending to the outermost permanent harbour works forming an integral part of the harbour system, or to the limits defined by natural geographical features protecting an estuary or similar sheltered area*').

Do you agree with the proposed alignment of definitions? If not, why not and what would you propose instead?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\*2. 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:

a. Replace the references to 'protected sea area' throughout the Directive by a reference to 'sea area D' as defined in Directive 2009/45/EC.

Do you agree with the proposed alignment of definitions?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\*3. Article 9(4) refers to an '*area where the annual probability of the significant wave height's exceeding two metres is less than 10 %*'. Although the aim of this definition is to mirror **sea area C** 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:

a. Replace the above mentioned reference in Article 9(4) by a reference to 'sea area C' as defined in Directive 2009/45/EC.

Do you agree with the proposed alignment of definitions?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\*4. 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:

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

Do you agree with the proposed clarification?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* 5. 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 pieces of EU law that have entered into force since 1998, new technological system and solutions that have been developed, and the fitness check recommendations, it is proposed to update and bring this requirement in line with the current electronic means of data storage or accessibility via the **National Single Window**. 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 and is not expected to generate any (significant) cost impact.

It has been acknowledged that there may be small or local operators (generally operating ships below 300 GT) that still keep paper-based records only and that may be negatively impacted by the proposal to encode the total number of persons on board in the National Single Window. Member States are therefore asked, on the basis of their **experience with approving passenger registration systems**, to identify any instances where this may be the case and to indicate whether they would nonetheless consider this proposal proportionate in view of the search and rescue needs.

In order 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 and without prejudice to the right of Member States to exempt certain operators from this obligation according to Article 9(2b) of Directive 98/41/EC, it is therefore proposed to:

a. Replace the references to 'company's passenger registrar' and to 'a shore-based company system' in Article 4(2) by a reference to National Single Window as established by Directive 2010/65/EU.

Do you agree with the proposed alignment with the National Single Window?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead



\* Have you identified any circumstances in which this proposal may lead to negative impact on operators in particular to those operating ships **below 300 GT**?

- Yes
- No
- No opinion

Please explain, the importance of such impact and which operators/routes would be concerned.

Would you nonetheless consider the proposal to encode the total number of persons on board in the National Single Window proportionate in view of the search and rescue needs or would you propose alternative means of data transmission and storage?

Do you wish to provide additional comments?

\* **6.** 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, and the fitness check recommendations, it is proposed to update and bring this requirement in line with the current electronic means of data storage or accessibility via the **National Single Window**.

In view of the fact that all ships operating between the Schengen and non-Schengen area already have to report the list of passengers and crew in the National Single Window (according to the Regulation 562/2006, as amended) and given that it is highly unlikely that companies (for voyages longer than 20 nm) keep the lists of passengers and crew in paper format only, it is envisaged that this proposal would not generate any significant cost increase for operators.

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

a. 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.

Do you agree with the proposed alignment with the National Single Window?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* Do you agree that this proposal would not lead to significant negative impact on operators?

- Yes
- No
- No opinion

Please explain your answer

\* **7.** Article 5(2) also 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 appears to be no longer justified and to undermine the objective of this requirement (i.e. data to be 'at all times' accessible in case of an emergency or accident).

In view of the fact that the number of persons on board is, according to Article 4(2), required to be communicated on-shore 'before departure', in line with the proposals above and given that there does not appear to be any justified reason why the passenger and crew list should be transmitted on-shore after the ship has departed, it is proposed to remove this inconsistency and to align the two requirements, i.e.:

a. Require that the lists of passengers and crew are recorded in the National Single Window 'before departure' (i.e. up to the point of departure).

Do you agree with the proposed alignment of the time at which the number and information on persons on board can be accessed in case of an emergency or accident?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* 8. 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**. It has been noted that the implementation of this requirement differs across Member States. Given that the protection of personal data at national level in the framework of National Single Window is equally driven by national legislation for data protection and Directive 95/46/EC, it is not considered that the status quo should be changed. It is therefore proposed to:

a. Retain the requirement that personal data shall not be kept longer than necessary for the purposes of this Directive (Article 8, para 3); and

b. Retain the requirement that the information required by Directive 98/41/EC should 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).

Do you agree with retaining the status quo as regards the data retention requirements and accessibility?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\*9. Article 2 defines the '**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, it is proposed to amend the definition and title of passenger registrar as follows:

a. Replace the title 'passenger registrar' by 'designated person ashore'; and

b. Replacing his responsibility for 'keeping' the information by 'recording' it in the National Single Window.

Do you agree with the proposed amendment of the definition of passenger registrar?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* **10.** 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:

a. Remove 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

b. Retaining the principle of self-declaration of passenger information for voyages longer than 20 nm (i.e. maintaining the status quo, as recommended by the fitness check).

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.

Do you agree with the proposed removal of the requirement to approve the passenger registration systems and its replacement by a verification of accuracy and timeliness of recording the data?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* 11. 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. To improve the effectiveness of search and rescue operations and in view of the fitness check recommendations, it is proposed that the nationality of persons on board is included in this list.

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. by using the National Single Window). It is therefore proposed that:

a. Information on nationality is included in Article 5(1) on the basis of self-declaration.

Do you agree with the proposed to introduce nationality as mandatory information to be registered for persons on board?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

12. Do you have other suggestions for removing outdated references, ambiguities or overlaps in the Directive?

## **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**

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Given the identified potential to remove overlaps and inconsistencies between the surveys under Directive 1999/35/EC ('ro-pax' and HSC surveys), an expanded port State control inspection (under Directive 2009/16/EC) and the flag State surveys (under Directive 2009/45/EC), and taking into account the fact that most Member States already combine or replace these surveys where possible, it is envisaged to further rationalise the inspection effort of national administrations and to maximise the time in which the ship can be commercially exploited.

In view of the fitness check recommendations and in order to ensure that specific requirements for the ro-pax surveys currently defined in Directive 1999/35/EC are not compromised, it is proposed to:

**\* 1. For vessels operating domestically:** 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, as long as:

- a. It contains the requirements included in Annex III Directive 1999/35/EC; and
- b. It is carried out exclusively by the surveyors of the Administration (i.e. cannot be delegated to a recognised organisation); and
- c. The relevant results (i.e. those concerning Annex III) are reported (in THETIS); and while
- d. Retaining a requirement for initial surveys (and the possibilities of exemption subject to the same conditions currently applicable) and 'in-service' surveys (i.e surveys during a regular service in accordance with Annexes I, III and IV Directive 1999/35/EC).

Do you agree with the proposed formulations?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

**\* 2. For vessels subject to port State control:** Transfer the requirements of Directive 1999/35/EC to Directive 2009/16/EC, clarifying that both annual surveys shall be carried out (and counted) as expanded port State control inspections, while:

- a. 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); and
- b. Ensuring that one of the two annual inspections contains requirements of Annex III Directive 1999/35/EC ('a specific survey'); and
- c. Ensuring that the other one contains requirements of Annexes I, III and IV Directive 1999/35/EC ('a survey during a regular service'), one part of which shall be carried out outside port.

Do you agree with the proposed formulations?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

**\* 3. 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.** Given that these vessels fall neither within the scope of PSC nor Directive 2009/45/EC, it is proposed to:

a. 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.

b. As an **alternative**, the requirements could be transferred to Directive 2009/21/EC (the Flag State Directive) and would strengthen SOLAS Chapter 1 art 7 which requires States party to maintain a system of unscheduled inspections of ro-ro passenger ships under their flag to verify compliance. This approach would allow to repeal Directive 1999/35/EC and, in combination with the changes proposed above, to re-attribute the specific survey requirements according to the flag/port States responsibilities rather than specific type of vessels they apply to.

Which alternative would you agree with?

- Keep the requirements in Directive 1999/35/EC
- Transfer the requirements to Directive 2009/21/EC
- Other alternative
- No opinion

Do you wish to provide any additional comments on your answer?

At the same time and applicable to all the proposals above, the following changes shall be considered:



\*4. 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 the objective of this requirement was to ensure that these two inspections are carried out with a certain time lag, i.e. 5-6 months, the fitness check demonstrated that this is not always the case. 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:

a. 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').

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\*5. 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'. The concept of the 'host State' was introduced by this Directive to facilitate the cooperation with non-EU Member States prior to the 2004 EU enlargement. 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 alignments with Directives 2009/45/EC and 2009/16/EC, it is therefore proposed to:

a. 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).

Do you agree with the proposed replacement of the concept of the host State by the port State or flag State as appropriate?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* 6. 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 Directives 2009/45/EC and 2009/16/EC, it is therefore proposed to:

a. 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 of joint inspections, i.e. when requested, port State, flag State or a third-country of destination (as appropriate) shall be invited to participate in the ro-pax survey.

Do you agree to remove the requirement to carry out joint surveys by default and to replace by a possibility to do so?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* **7.** 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 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 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:

a. Replace the term 'survey' by 'inspection' when referring to specific ro-pax surveys as currently provided for in Directive 1999/35/EC (i.e. including in the proposed merger with Directive 2009/45/EC).

Do you agree to replace the term 'survey' by 'inspection' when referring to specific ro-pax surveys?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* **8.** 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:

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

Do you agree to remove the reference to 'indicative guidelines' surveys from Annex IV?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree

\* **Secondly**, given that the Directive provides for 2 annual inspections carried out in regular intervals, the notion of 'unscheduled' surveys shall 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.). Although the fitness check was inconclusive as to whether Member States carry out 'in-service' surveys in a truly 'unannounced' manner, it is nonetheless considered that the possibility to carry out these surveys in such manner should be maintained and encouraged, namely in view of the increasing number of citizens' complaints, concerning the operational elements during a voyage. Several alternatives could be envisaged in this respect:

- a. To replace the notion of 'unscheduled' surveys in Annex IV by 'unannounced' surveys, de facto making these surveys always unannounced; or alternatively
- b. To remove the notion of 'unscheduled' surveys from Annex IV without any replacement, i.e. no explicit recognition of the added value of unannounced surveys; or
- 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).

Which alternative wording concerning the removal of reference to 'unscheduled' surveys and its replacement would you prefer?

- To replace the notion of 'unscheduled' surveys in Annex IV by 'unannounced' surveys
- To remove the notion of 'unscheduled' surveys from Annex IV without any replacement
- 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
- Other alternative
- No opinion

Do you wish to provide any additional comments on your answer?

\* **9.** 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. In fact, the requirements of Annex IV clearly necessitate at least a part of the survey (such as checking on the availability of seats, the blocking of passageways, safety announcements during voyage, ventilation of the vehicle decks etc.) to be carried out while the ship is sailing. However, given that Article 8 includes vague wording that **'enough'** items listed in Annex IV (and Annex I and III) should be covered, this 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:

a. 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.

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* **10.** 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 can be considered to:

a. Remove these two Articles in their entirety. This is expected to result in simpler requirements for initial surveys without compromising on their content.

Do you agree to remove Articles 4 and 5 of Directive 1999/35/EC?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

11. Do you have other suggestions for removing outdated references, ambiguities or overlaps in the Directive?

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

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### \* 1. Offshore service vessels

In the Directive, the definition of 'passenger' adheres to the SOLAS definition and does not include the definition of **specialised personnel** with training or mandatory medical fitness requirements on board of offshore service vessels. At international level, this specialised personnel is referred to as 'industrial personnel' (the definition of which is under development at the IMO) and covers personnel transported on offshore service vessels, for example to wind farms. Some Member States consider those workers as passengers, with passenger ship rules being applicable, while others define those workers as 'special personnel' and apply to them the IMO Code for Special Purpose Ships (SPS Code).

While it is clear that the Directive does not apply to Special Purpose Ships (the Directive already clearly stipulates that **passengers are not persons employed** or engaged in any capacity on board a ship on the business of that ship (Article 2(k)), it has also to be noted that Directive standards were developed for passengers and not for ships transporting trained specialised 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

a. 'offshore supply vessels' as defined in the IMO OSV Guidelines, 2006, as amended.

Do you agree with the proposed formulation?

- Yes  
 No  
 No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

## \* 2. Traditional and rig-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, built 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) 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 should be considered 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:

a. '**traditional ships**', defined 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' (as defined in Directive 2002/59/EC); or **alternatively**

b. '**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' (i.e. retaining the current references to the year of design and material).

Which alternative formulation would you agree with?

- Define traditional ships according to Directive 2002/59/EC
- 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
- Other alternative
- No opinion

Do you wish to provide additional comments on your answer?

\* **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:

a. 'sailing ships', defined as 'ships primarily propelled by sails and usually fitted with mechanical propulsion for auxiliary and emergency purposes'.

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

### \* **3. Pleasure yachts and pleasure craft**

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:

a. '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 (i.e. the definition of 'pleasure' ship with the Recreational Craft Directive, albeit maintaining the SOLAS reference to 'pleasure' yachts).

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?



Please explain why you disagree and describe what you would propose instead

#### \* 4. 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. These are mainly made from materials other than steel or equivalent to minimise the weight to be carried on board the cruise ship or simply equipment on board a cruise ship. The fitness check revealed an unclarity 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 (a rare occurrence) in which case the Directive should 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:

a. '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'.

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

## \* 5. 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.

However, during the fitness check one Member State indicated that it does not consider the Directive's (and SOLAS) aluminium fire insulation standards realistic. This concern, at least for the ships above 24 m in length, seemed to have been primarily related to the definition of spaces which should be additionally fire insulated. Nonetheless, consultations carried out so far have not brought sufficient insight as regards the need for any additional clarifications in this respect (i.e. without reducing the A-60 safety level provided for by the Directive).

Member States are therefore asked, on the basis of their **experience with certifying aluminium ships above 24 m in length under the Directive's requirements**, to identify concrete instances, if any, where the Directive's fire insulation requirements were found impracticable or ambiguous.

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; noting that not all Member States apply the Directive in the same manner; and in view of the fitness check recommendations, it is proposed to clarify and amend the definition of equivalency in the following manner:

a. 'equivalent' material means 'any non-combustible material which, by itself or due to insulation provided, can achieve structural and integrity properties equivalent to steel at the end of the applicable exposure to the standard fire test (e.g. aluminium alloy)'; while

b. allowing sufficient phase-in period for the aluminium ships currently not certified under the Directive.

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

\* Have you identified any circumstances in which the Directive's fire insulation requirements were found **impracticable or ambiguous**? If yes, which ones and how would you propose to clarify them (i.e. without reducing the safety standard currently provided by the Directive)?

- Yes
- No
- No opinion

Please explain concretely which requirement was found impracticable or ambiguous

How would you propose to clarify it?

Do you wish to provide additional comments?

## \* 6. Sea areas

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** 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 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. In addition, it is possible to have different significant wave height in winter and summer, adding even more complexity to the definition.

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 received during the fitness check, the proposed simplification of sea areas definitions is limited to the elements that would not influence the current delimitation of new sea areas for Member States but would eliminate only redundant or overlapping criteria.

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 its purpose 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 large 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.

It is therefore considered that these two references may be removed from the definition of sea areas without impacting on the existing drawings of sea areas. Member States are nonetheless asked to verify that this is indeed the case and to signal any changes that this proposal may imply in this respect.

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:

- a. remove the reference to 'where the shipwrecked persons can land'; and
- b. remove the reference to the 'place of refuge'.

Do you agree with the proposed simplification of sea areas definition?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain concretely which requirement was found impracticable or ambiguous

How would you propose to clarify it?

\* Will the proposed simplification have any impact in your delimitations of sea areas?

- Yes
- No
- No opinion

Please specify which one and how it would change

Do you wish to provide additional comments?

## \* 7. Ships below 24 m in length

The fitness check has identified a mismatch between the existing **prescriptive safety standards for small 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 (96%) of the fleet in terms of numbers of ships is currently not covered by the harmonised EU safety standards. Moreover, the Directive already gives Member States the flexibility to apply national rules when they find the harmonised standards for small ships impracticable and/or unreasonable and it has proven increasingly difficult to adapt the prescriptive, one-size-fits all SOLAS standards for this category of ships. In view of the fitness check recommendations, it is therefore envisaged to exclude passenger ships below 24 m in length from the scope of Directive 2009/45/EC and to amend Article 3 so the Directive applies to:

- a. new and existing passenger ships of 24 meters in length and above!; while
- b. allowing for the re-certification of the ca 70 small ships currently certified under the Directive within the regular national certification cycle.

Do you agree with the proposed formulation?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

## \* 8. Format of the Annex

Annex I of the Directive contains the currently applicable technical requirements. Its format dates back to pre-SOLAS 2009. With the adoption of SOLAS 2009, the numbering and the format of the corresponding Regulations have significantly changed. Moreover, the Annex contains in one document an accretion of rules concerning specific classes of ship, applicable for certain sizes and from certain dates. As a result, the Annex is extremely difficult to read and to compare against the current SOLAS requirements.

Therefore, in view of the fitness check recommendations and taking into account lessons learnt from the recently adopted Marine Equipment Directive (Directive 2014/90/EU), it is proposed to align the Annex structure to the current SOLAS one to facilitate the subsequent amendments, allow for direct comparison as well as promote a harmonised interpretation as the shipyards, ship-owners, inspectors and recognised organisations are used to work with the SOLAS. The **new format of the Annex** should be developed with the assistance of EMSA, national experts and the Committee (COSS).

Moreover, both national administrations and industry stakeholders mentioned that the regular technical updates of the Directive take too much time. Experience has shown that the time lag between the update of international standards by IMO and their transposition into national law may easily reach 30 months per update (including the transposition by national authorities). In order to reduce the transposition costs for Member States, it should be therefore considered to update the Annex in the form of **Commission Regulations** rather than Directives, with the assistance of experts and subject to comitology procedure.

In view of the fitness check recommendations, it is therefore proposed to:

- a. indicate that the Annex should be adopted (by means of an implementing act) in a format that clearly indicates the dates from which the requirements are to apply and that contains references to the SOLAS 2009 requirements, as amended; and
- b. specify that the implementing acts referred to in Article 10 (i.e. technical adaptations) shall be adopted in the form of Commission Regulations.

Do you agree with the proposed formulations?

- Yes
- No
- No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead

## \* 9. 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 (Commission has 6 months to raise objections) 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. In addition, 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 proposal has been made to align the specific notification procedures with the Directive (EU) 2015/1535 (that replaced and repealed Directive 98/34/EC) 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 2015/1535 neither allows for the decision of the Committee (COSS) in case the proposed measures are not justified, 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 this Directive (the so called TRIS database) and in order to streamline, facilitate and maximise the added value of existing reporting requirements, it should be envisaged to set up and maintain a **database** containing the notifications, additional information, decisions of COSS and the final adopted measures.

An existing platform that could perform a function of such database is **CIRCA**. 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:

- a. Mandate the Commission to set up and maintain a database containing the notifications and information provided by Member States under Article 9 (1, 2 or 3); and
- b. Indicate that such database would serve the purpose of informing other Member States as foreseen in Article 9 (4); and
- c. Specify that condition of access to the database shall be decided with the assistance of the Committee (COSS).

Do you agree to set up a database containing the notifications of exemptions/equivalencies and to host such database on CIRCA?

- Yes  
 No  
 No opinion

Do you wish to provide additional comments?

Please explain why you disagree and describe what you would propose instead



**10.** Do you have other suggestions for removing outdated references, ambiguities or overlaps in the Directive?