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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

REFIT
Adjusting Course: EU Passenger Ship Safety Legislation Fitness Check

{SWD(2015) 197 final}

1. Introduction

1.1. Why a fitness check on Passenger Ship Safety legislation?

Given that 23 out of 28 Member States are coastal countries, with four being island states, passenger ships play an important role in the mobility of EU citizens. On average, it is estimated that more than 400 million people pass through EU ports every year. 120 million passengers are transported by domestic passenger ships, i.e. ships sailing between ports of the same Member State.

The EU legislation on Passenger Ship Safety has been put in place over a period of 15 years mainly in response to accidents. This has resulted in a set of Directives driven and shaped by the circumstances in which they were drafted. Although they serve the same overall purpose, i.e. to ensure a common, high level of passenger ship safety, they do not create a fully coherent framework. Each Directive has a different scope and applies to different types of ships and voyages. More importantly, the past decade has brought about technological development that rendered some of the existing provisions outdated and unnecessarily burdensome.

Previous evaluations and consultations failed to gather sufficient evidence to shed light on the implementation and revealed poor data availability, especially in terms of national passenger ships fleet and safety records. The Commission, together with the European Maritime Safety Agency (EMSA), national administrations and an external contractor, has therefore undertaken a more systematic and comprehensive fitness check of the legislative framework in place. While more data became available over time, this fitness check has also been an occasion to collect further information and carry out additional consultations, desk analysis and case studies.

For the first time, extensive quantitative data was gathered in a reliable and proportionate manner. Although the available data did not allow for the carrying out of a fully-fledged cost-benefit analysis on every single regulatory requirement, they are considered to provide an informative input to the fitness check analysis; and a sufficient basis for the subsequent review and monitoring processes the Commission proposes to undertake.

1.2. Scope of the fitness check

The safety of passenger ships in the EU is regulated at three levels: international, EU and national. The EU passenger ship safety legislation has been set in place to address potential safety risks caused by the fact that the international standards do not apply to domestic voyages or that they are insufficient. It addresses the difficulties in search and rescue of passengers of ships in distress, aims at achieving a common safety level and ensures that the safety standards are correctly applied.

For ships engaged in international voyages (i.e. including between two EU Member States and therefore subject to port State control[1]), international conventions and certain EU rules apply. 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[2], which covers passenger ships made of steel or equivalent material and high speed craft. Where applicable and feasible, it is based on internationally agreed standards, namely the International Convention for the Safety of Life At Sea (SOLAS)[3]. In addition, Directives 2003/25/EC, 1999/35/EC and 98/41/EC provide for specific EU rules that apply to roll-on roll-off passenger ships (known as ro-pax ships)[4], high speed craft (HSC)[5] and the registration of persons on board.

This is a complex architecture that requires the use of modern, comprehensive better regulation tools such as fitness checks. The following table provides an overview of the four EU Directives that have been chosen for this fitness check and that represent a set of key safety standards and requirements for passenger ships sailing in the EU waters:

Table 1: EU passenger ship safety legal framework: Directives in scope of the fitness check

	Content	**Scope**		
		Voyage	**Ships**	**Application**
Directive 2009/45/EC	Safety standards Surveys *(general)*	Domestic	(a) Passenger ships made of steel and equivalent material[6]; (b) HSC	All ships irrespective of size (flexibility for ships below 24 m of length) Classes (A, B, C, D)[7]

1 Directive 2009/16/EC of the European Parliament and of the Council on port State control (OJ L 131, 28.5.2009, p.57–100)

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

3 This Convention was adopted by the International Maritime Organisation (IMO) and ratified by all EU Member States

4 Roll-on/roll-off vessels are designed to carry wheeled cargo, such as trucks, trailers and cars that are driven on and off the ship on their own wheels or using a platform vehicle. If they carry more than 12 passengers in addition to vehicles they are called ro-pax vessels

5 As defined in SOLAS Chapter X Reg. 1.3

6 For the sake of simplicity, referred to hereinafter as "steel ships"

7 Passenger ships are classified in four different classes according to the sea areas where they can operate, depending on parameters such as the distance to coast. While Class A ships do not have any limitation with regard to distance to coast in which they can operate, for Class D ships the distance is limited to 3 nautical miles (ca. 5,6 km)

Directive 2003/25/EC[8]	Safety standards *(specific: stability requirements for ro-pax)*	Domestic and international	Ro-ro passenger ships	International: Regular service Domestic: Class A, B and C
Directive 1999/35/EC[9]	Surveys *(specific: ro-pax and HSC in regular service)*	Domestic and international	(a) Ro-ro passenger ships; (b) HSC	Regular service only Domestic: Class A
Directive 98/41/EC[10]	Safety standards Surveys *(specific: registration of persons on board)*	Domestic and international	All passenger ships	Length of the voyage *(below 20 nautical miles only counting of persons on board)*

Source: Commission, 2015

1.3. What do stakeholders say?

Stakeholders agree that the passenger ship safety legislative framework is important in improving safety while facilitating a level playing field. In the most recent public consultation on maritime strategy, 59% of stakeholders agreed that the existing international and EU legislative framework on ship safety is adequate (with 26% expressing no opinion).

Nevertheless, stakeholders highlighted a set of problems related to the varied implementation of the passenger ship safety legal framework, pointing to the complexity and the lack of clarity in a number of definitions and requirements, overlaps and outdated reporting requirements.

Stakeholders also questioned the proportionality and adequacy of safety requirements for small steel ships and unintended consequences concerning ships outside the scope of the current legal framework. This has led to a plea to improve the current regulatory framework by simplifying rules, thereby facilitating administration and enforcement and eliminating unnecessary costs.

8 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)

9 Council 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 (OJ L 138, 1.6.1999, p.1)

10 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 (OJ L 188, 2.7.1998, p.35)

2. Key evaluation questions

2.1. Is the EU passenger ship safety legal framework fit for purpose?

The EU passenger ship safety legal framework is largely fit for purpose. It has resulted in improved safety of life on passenger ships sailing in EU waters and contributed to developing internal market in maritime transport. There is however scope for further enhancing the level of safety as well as the efficiency and proportionality of some of the regulatory requirements.

The domestic passenger ships governed by EU safety standards[11] 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. The majority of passengers therefore travel on ships complying with common safety standards which ensure a common safety level. One third of passengers travel on ships certified according to national standards, these are in the main, smaller, tailor-made ships made of composite materials or wood (ca. 12% and 18% respectively).

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[12]. The corresponding risk per passenger hour is lower than for international passenger ships. Although the consequences of accidents of the EU domestic fleet were less serious than for international passenger ships, the accident frequency was higher. This comes as no surprise given that in the coastal areas the traffic is more intense and there are more shallow waters where grounding can occur.

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[13]. While acknowledging that there were other reasons for this increase (such as increased demand for and availability of vessels on the second hand market), the EU legislation certainly contributed to this trend.

Although some national administrations alluded to the fact that the EU legislation may have led to increase in the building of non-steel ships driven by less stringent national safety standards, no evidence has been demonstrated that this was the case[14]. On the contrary, other stakeholders suggested the opposite and called for the development of harmonised EU safety standards for ships currently outside the scope of EU legislation (i.e. ships built from non-steel or equivalent materials such as composite).

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11 I.e. under Directive 2009/45/EC

12 It should be noted that these statistics do not include such high profile cases as (for example) the Costa Concordia (2012) or the Norman Atlantic (2014) casualties as these relate to ships engaged in international voyages (and therefore not falling under safety requirements harmonised by Directive 2009/45/EC, applying to domestic voyages only)

13 I.e. the entry into force of Directive 98/18/EC, a predecessor of Directive 2009/45/EC

14 I.e. the choice of building a ship in steel or other material is primarily driven by the price and characteristics of the chosen material

2.2. What drives and hinders the effectiveness of the EU passenger ship safety legislation?

Given that ship safety standards are subject to continuous improvement, the effectiveness of the EU passenger ship safety legislation is driven by regular updates in view of lessons learnt and of scientific progress. Regular review also ensures that safety standards are applied in a common manner and remain commensurate to the level of risk.

The effectiveness of the EU passenger ship safety legislation has been hindered by its complexity and ambiguity of application (namely as regards the ships falling within its scope of application); outdated reporting obligations (which do not exploit current digital monitoring and information systems); unclear presentation of the technical safety standards; and low speed and difficulty of the update and exemption procedures. These weaknesses rendered monitoring, implementation and enforcement of safety standards suboptimal and unnecessarily difficult.

Furthermore, the awareness of passengers about the EU passenger ship safety legislation and its benefits remain lower than expected. This may be linked to the relatively low level of organisation of passengers in maritime transport.

2.3. Have the risks been managed in an efficient and proportionate manner?

As evidenced by the accident statistics, the existing legislation has achieved a high level of passenger safety. The regulatory cost related to EU safety standards have not proved to be 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.

For example, the sum of the additional costs for the quantifiable part of firefighting measures, life-saving appliances and initial surveys can be as low as EUR 100.000 for a larger ship, while construction costs are measured in tens if not hundreds of millions. In relative terms the same applies for smaller ships.

The difference in costs of updating safety standards at national level against EU level is also remarkable. An update of national legislation, if done individually by every concerned Member State, would entail a cumulative assessment cost for national administrations of between EUR 150.000 - 200.000. This is some ten times more than at present, when standards are updated at the EU level.

On the other hand, the overlaps and inconsistencies between the various inspection regimes applicable to ro-ro passenger ships in the EU (i.e. ro-pax inspections, flag State surveys and port State controls) prevent national administrations from fully optimising their inspection efforts. They also prevent the maximisation of the time during which the ship is commercially exploited. If the different kinds of inspections were combined to the extent possible, 770 self-standing ro-pax inspections could be saved every year for the entire EU (if the same routes/ships continued in service as today).

The approval of passenger registration systems, generating significant workload for some national administrations (e.g. 4250 working hours in Greece compared to 100 working hours in Italy), has proven very burdensome. Such workload and the corresponding cost have been evaluated as excessive.

Finally, the complexity of the regime and overlapping requirements spread across different pieces of legislation constitutes an important irritant and cost factor for all actors.

2.4. Has the principle of subsidiarity been complied with, ie. can the objectives be better achieved by Member States acting alone?

In general, EU passenger ship safety legislation complies with the principle of subsidiarity. It is however proven that the existing safety standards for small steel ships below 24 m in length have to be further assessed against the identified safety and internal market objectives. Given that small ships are built mainly from materials other than steel, the vast majority of this fleet is currently not covered by the harmonised EU safety standards (96%). This implies that most of vessels below 24 m are already certified under national legislation.

The accidents recorded for small ships outside the scope of EU standards do not demonstrate any specific safety concern (5 fatalities over the last 4 years, all of them occupational accidents). Furthermore, even for those ships covered by EU standards, there are practically no flag changes between Member States.

The wide range of services that these vessels are built for (e.g. daily or overnight passages, touristic daily cruising, calling to ports with specific constrains or infrastructures) produces a very broad range of designs and technical solutions. This makes identifying a common set of detailed rules fitting such a variety of services for smaller vessels extremely challenging. Member States should be therefore in a better position to assess the sensitivity of these ships to the local operational conditions that vastly differ throughout the EU. On the other hand, some shipyards[15] highlighted that developing EU standards for all small ships (i.e. irrespectively of the material they are built from) would allow them to sell their products smoothly and quickly in all EU Member States.

2.5. Would international safety standards have been more effective or efficient than the current EU standards?

As regards domestic voyages, it is unlikely that international standards would be more effective or efficient than the current EU standards. International IMO standards do not apply. In the absence of EU standards, Member States would have either to develop their own legislation or to adopt international rules, which are however not fully adequate for domestic voyages and would need to be adapted accordingly. This would also necessitate regular

[15] Namely in Denmark and Portugal. National experts from Croatia and Sweden expressed a similar opinion

updates to keep track of new developments in shipbuilding technology.[16] In any case, neither a common safety level would be achieved, nor internal market facilitated. In addition, EU standards provide for access for persons with reduced mobility, an element which is recommended, but not mandatory in international standards.

The situation for international voyages is different. Full reliance on the relevant international standards would be more effective and efficient, provided that they guarantee an adequate level of safety. However, this may not always be the case. Therefore, having for example more stringent damage stability requirements for ro-ro passenger ships sailing to or from EU ports[17] is considered the best solution. This is currently delivering the adequate safety level for this type of ship, prevalent in the EU.

Finally, in the absence of an enforcement mechanism at international level, the existing EU inspection regimes applicable to both domestic and international passenger ships remain a pre-requisite for maintaining a high standard of safety of life for passenger ships and eliminating substandard shipping.

3. Results of the fitness check

This fitness check showed that the key objectives of the EU passenger ship safety legislation related to passenger safety and internal market remain highly relevant. However, it also revealed that these objectives can, in some instances, be delivered in a simpler and clearer manner.

The potential to simplify, clarify and repeal a number of ambiguous, outdated or overlapping requirements has been identified in certain areas:

- **Complexity and administrative burden:** Mandatory surveys for the safe operation of regular ro-ro ferries have been found to significantly overlap with other types of surveys and inspections (namely flag State surveys and port State control inspections). Member States have implemented these requirements in a pragmatic way, which means that the current legal framework no longer reflects the state of affairs. The complexity of the EU passenger ship safety legislation is aggravated by an outdated format of the safety standards for domestic passenger ships[18] that have become over time extremely difficult to compare against the existing international requirements.

- **Ambiguity and lack of transparency:** 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, such as the type of ships covered or regularity of inspections.

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16 To note that the relevant national legislation in some Member States is based on international standards that are no longer in force

17 As defined by Directive 2003/25/EC in the aftermath of the Estonia accident in September 1994

18 I.e. the Annex to Directive 2009/45/EC

- **Disproportionate requirements:** Small ships are defined as less than 24m long. This definition is considered the most appropriate in defining commonly applicable technical safety standards. As small ships are more sensitive to local operational conditions, Member States should be in a better position to assess the concrete risks and to define the corresponding safety standards. Furthermore, unlike for bigger ships, small ships tend to be operated in the same Member State until the end of their operational life and their transfer between Member States is limited. The prescriptive EU standards applicable to small steel ships only (i.e. covering ca. 70 out of 1950 small ships) have been evaluated as disproportionate and do not provide sufficient EU added value to be retained. However, in order to facilitate access for EU manufacturers to the wider EU market, some stakeholders raised the possibility of developing guidelines or a code for all small vessels.

In addition to the identified simplification potential, the fitness check also revealed a number of issues that unnecessarily reduce the effectiveness of search and rescue operations:

- **Outdated support for 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, this is not always the case. According to the current requirements, this 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[19] and the National Single Window[20] and necessitates that the national competent authority contacts the shipping company in the event of an emergency. Furthermore, the recorded data does not always include information on nationality (i.e. besides name, age and sex), making the assistance provided to victims and their relatives unnecessarily burdensome. Operators that already transmit such data to SafeSeaNet or the National Single Window are exposed to double reporting regime.

Finally, the fitness check identified a number of other, substantial issues related to the adequacy and proportionality of existing safety standards:

- **Safety-related issues necessitating further assessment:** These issues will necessitate further assessment and consultations with experts. They include the differences in safety requirements between the different classes of ships and the corresponding sea areas; the broader application of ro-pax inspection regime and the possibility to develop harmonised standards for ships built from non-steel or equivalent materials, currently not covered by the EU regulatory framework.

  Importantly, some of these issues may be better first dealt with at the international level, before further action at the EU level can be envisaged, particularly as regards the review of applicable damage stability requirements.

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19 Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system (OJ L 208 of 5.8.2002, p.10-27)

20 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 (OJ L 283, 29.10.2010, p.1-10)

4. Follow-Up Actions

4.1. First step

The Commission, supported by EMSA and in cooperation with Member States and stakeholders, will consider proposing a simplified regulatory framework for EU passenger ship safety and will promote the upgrade of damage stability standards at international level.

Simplifying EU passenger ship safety regulatory framework: Without changing its policy objectives and the key delivery mechanisms, the Commission envisages to consider proposals in view of removing the outdated, ambiguous or overlapping requirements identified in this fitness check, most notably by:

- Removing overlaps between the specific surveys under Directive 1999/35/EC, the expanded port State control inspections and the annual flag State surveys
- Clarifying that for the purposes of Directive 2009/45/EC: (a) aluminium is a material equivalent to steel (under clarified corresponding fire insulation requirements); and (b) offshore service vessels and traditional ships fall outside the scope of the Directive
- Clarifying the definitions of passenger registration requirements in Directive 98/41/EC, such as length of the voyage
- Simplifying the sea areas definition in Directive 2009/45/EC
- Simplifying the Annex of Directive 2009/45/EC to increase its readability

The Commission will also consider proposals for removing the disproportionate requirements, in particular by:

- Excluding passenger ships built of steel or equivalent material of below 24 m in length from the scope of Directive 2009/45/EC
- Eliminating the requirement for the formal approval of the passenger registration system currently provided for in Directive 98/41/EC, while focusing on its proper functioning

In order to eliminate double reporting requirements and to improve the effectiveness of search and rescue operations, the Commission will consider providing for:

- Recording the information on the persons on board in an existing electronic system that in the event of an emergency or accident allows for an immediate transmission of data to the competent authority

- The nationality of passengers to 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

Promoting the upgrade of international standards: At international level, the Commission, supported by EMSA and in cooperation with Member States and stakeholders, will promote the upgrade of international damage stability standards for passenger ships and will consider proposing the following to the International Maritime Organisation:

- Technical submission to the Formal Safety Assessment expert group meeting in November 2015

- EU proposal for a new damage stability standard (the so called "R index") to the Sub-Committee on Ship Design and Construction meeting in January 2016, with a view of finding an agreement on a higher standard by the Maritime Safety Committee in 2016

4.2. Second step

The Commission will further assess a number of other safety and internal market related issues. In particular, it envisages to:

- Review the adequacy of differences in safety requirements between Class C and D ships under Directive 2009/45/EC and the corresponding sea areas

- Promote the application of specific surveys under Directive 1999/35/EC to Classes B, C and D of ro-pax vessels engaged in regular services

- Assess the possibility to propose amending or repealing the specific EU damage stability requirements for ro-ro passenger ships[21], on the basis of international standards, if these will have been upgraded in a satisfactory manner for the EU

- Consider developing guidelines or a code for small vessels and vessels built in non-steel or equivalent materials, based on functional requirements

This will require assistance, exchange of best practices and continuous monitoring of existing legislation. The Commission, in cooperation with EMSA, therefore envisages to:

- Establish an appropriate framework for exchange of views with national administrations, industry stakeholders and passenger associations in the area of EU passenger ship safety

Finally, taking well into account the identified simplification potential, the Commission envisages stepping up the enforcement of existing requirements with the assistance of EMSA and invites national administrations to join these efforts.

[21] I.e. Directive 2003/25/EC