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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 November 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2019) 7940 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 19.11.2019 amending Directive 2009/45/EC of the European Parliament and the Council on safety rules and standards for passenger ships, as regards the safety requirements for passenger ships engaged on domestic voyages

Delegations will find attached document C(2019) 7940 final.

Encl.: C(2019) 7940 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 19.11.2019

amending Directive 2009/45/EC of the European Parliament and the Council on safety rules and standards for passenger ships, as regards the safety requirements for passenger ships engaged on domestic voyages

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Directive 2009/45/EC of the European Parliament and of the Council¹ provides for safety standards for domestic 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)².

Annexes I, II and III of Directive 2009/45/EC include technical safety requirements and the corresponding certificate forms. Annex I has been last amended by Commission Directive (EU) 2016/844³, in application since 1st July 2017.

Directive 2009/45/EC has been recently amended by Directive (EU) 2017/2108 of the European Parliament and the Council⁴. One of the changes introduced was the clarification of the scope of Directive 2009/45/EC: Passenger ships below 24 meters in length have been excluded, while it was clarified that ships built in aluminium are included.

Directive (EU) 2017/2108 also empowered the Commission in Article 10(3) to adopt delegated acts amending the safety requirements for new and existing passenger ships engaged on domestic voyages.

The Regulatory Fitness and Performance Programme (REFIT) concluded that Annex I to Directive 2009/45/EC should be simplified to increase its readability. It also recommended exploring whether the current update procedure can be accelerated and the subsequent transposition costs for Member States reduced. The objectives and the rationale of these recommendations are described in further detail in the Commission Staff Working Document accompanying the Report from the Commission to the European Parliament and the Council on the fitness check results⁵.

In the meantime, a number of SOLAS amendments have been agreed at international level, including the introduction of the International Code of safety for ships using gases or other low-flashpoint fuels (IGF code).

The technical annexes of Directive 2009/45/EC (Annexes I, II and III) should therefore be amended accordingly and replaced by annexes to this Regulation.

¹ 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).

² This Convention was adopted by the International Maritime Organisation (IMO) and ratified by all EU Member States.

³ Commission Directive (EU) 2016/844 of 27 May 2016 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships (OJ L141, 28.05.2016, p. 51).

⁴ Directive (EU) 2017/2108 of the European Parliament and of the Council of 15 November 2017 amending Directive 2009/45/EC on safety rules and standards for passenger ships (OJ L315, 30.11.2017, p. 40).

⁵ SWD (2015) 197.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Member States and stakeholders were consulted within the Commission Passenger Ship Safety Expert Sub-group of the Maritime Safety Group⁶ in four written consultation rounds.

In addition, during the meetings of the Sub-group on 24th April 2018, 25th September 2018, 12th December 2018 and 19th February 2019, amendments to technical Annexes I, II and III were presented and further discussed.

The consultation process was divided into different stages:

- (1) In the first stage of the consultation, three main actions were agreed:
 - Restructure Annex I of Directive 2009/45/EC in two sections: The first section retained the current structure of Annex I of Directive 2009/45/EC and it will be applicable to ships built until an agreed cut-off date (18 months after the entry into force of this Regulation). The second section will be applicable to ships built after the agreed cut-off date and will include a complete set of safety requirements aligned with the SOLAS structure as explained below.
 - Align the structure of the second section of Annex I with SOLAS. Over the years, the structure of Annex I has gradually departed from the structure of SOLAS. A re-alignment will facilitate subsequent amendments, allow for direct comparison of requirements and promote harmonised interpretation, given that shipyards, ship-owners, inspectors and recognised organisations work within the SOLAS structure as a benchmark.
 - Delete requirements for passenger ships below 24 meters in length in both sections of Annex I.
- (2) In the second stage of the consultation, clearly outdated references or obvious mistakes were corrected.
- (3) The third stage of consultation was dedicated to the revisions of technical safety requirements. The following elements were specifically addressed:
 - Latest amendments to SOLAS, included in IMO Resolutions MSC.366(93), MSC.380(94), MSC.386(94), MSC.392(95), MSC.394(95), MSC.395(95), MSC.404(96), MSC.409(97), MSC.421(98) and MSC.436(99). Each amendment was analysed with regard to their relevancy and/or applicability to the ships under the scope of the Directive. A limited number of amendments was agreed to apply retrospectively, and is therefore reflected in the first section of Annex I.
 - Clarifications related to aluminium-built ships, specifically those concerning general fire insulation, structural insulation and elements explicitly required to be built of steel.

⁶ The Maritime Safety Group is an informal, permanent expert group on maritime safety set up by DG Mobility and Transport (Register of expert groups number E01079).

- Earlier amendments to SOLAS that have been omitted from technical updates and the clarification of several ambiguities identified during the review of technical requirements.
- (4) The fourth stage of consultation was dedicated to finalising any outstanding issues, taking into account feedback received during the third consultation round and other issues raised in the previous meetings. This round also included a consultation on Annex II (Form of Passenger Ship Safety Certificate) and Annex III (on the safety requirements for persons with reduced mobility) of the Directive, for which only minor amendments have been proposed.

This consultation process ensured a broad consensus on the draft Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 proposes replacing Annex I, II and III of Directive 2009/45/EC by Annex I, II and III of this Regulation.

Article 2 of this Regulation sets out the date of application of the proposed Regulation, including the transitional period of 18 months.

COMMISSION DELEGATED REGULATION (EU) .../...

of 19.11.2019

amending Directive 2009/45/EC of the European Parliament and the Council on safety rules and standards for passenger ships, as regards the safety requirements for passenger ships engaged on domestic voyages

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/45/EC of the European Parliament and the Council of 6 May 2009 on safety rules and standards for passenger ships⁷, and in particular Article 10(2) thereof,

Whereas:

- (1) The International Conventions referred to in point (a) of Article 2 of Directive 2009/45/EC have been amended. A detailed review of technical elements has also shown that some of the earlier amendments of International Conventions have been omitted.
- (2) Directive (EU) 2017/2108 of the European Parliament and the Council⁸ amended the definition of ‘equivalent material’ to include aluminium ships within the scope of Directive 2009/45/EC. To ensure harmonised implementation, it is necessary to enter a number of technical clarifications in the Annexes to Directive 2009/45/EC with regard to aluminium ships.
- (3) Furthermore, Directive (EU) 2017/2108 has excluded passenger ships measuring less than 24 meters in length from the scope of Directive 2009/45/EC. The technical requirements for those ships should therefore be deleted from Annex I to Directive 2009/45/EC.
- (4) Experience has revealed several ambiguities and inconsistencies in the technical requirements related to missing or incorrect references.
- (5) The Regulatory Fitness and Performance Programme (REFIT) found that the outdated format of Annex I to Directive 2009/45/EC meant that the safety standards for passenger ships engaged on domestic voyages has become extremely difficult to

⁷ OJ L 163, 25.6.2009, p. 1.

⁸ Directive (EU) 2017/2108 of the European Parliament and of the Council of 15 November 2017 amending Directive 2009/45/EC on safety rules and standards for passenger ships (OJ L 315, 30.11.2017, p. 40).

compare against the existing international requirements. The REFIT fitness check included a recommendation to simplify that Annex to increase its readability.

- (6) Pursuing this simplification and increased readability, while also updating some technical requirements, it is deemed appropriate to structure the Annex I of Directive 2009/45/EC into two sections, one being applicable to ships, the keel of which was laid or which were at a similar stage of construction before [18 months after the entry into force of this Regulation], and the other one being applicable to ships, the keel of which was laid or which were at a similar stage of construction on or after [18 months after the entry into force of this Regulation]. Section 1 of Annex I shall contain the most relevant updates concerning the elimination of all provisions for passenger ships below 24m in length, provisions for protections against noise, emergency towing procedures, and requirements for ships using low flashpoint fuels.
- (7) Experience with Directive 2009/45/EC has shown that it could take up to 30 months for each update of international standards to be transposed into national law. The REFIT fitness check has therefore recommended exploring whether the current update procedure can be accelerated in order to reduce the transposition costs for Member States. Experience with the implementation of other directives in the field, has shown that updating the technical requirements by means of a Regulation reduces the time for the adaptation to revised requirements of the International Maritime Organisation ('IMO') and eliminates transposition costs for Member States. Therefore, the technical safety requirements and the corresponding certificate forms laid down in Annexes I, II and III to Directive 2009/45/EC should be set out by means of a Regulation.
- (8) To provide sufficient time for operators to adapt to the amended technical requirements contained in the Annexes to this Regulation, as well as to enable Member States to repeal their national measures transposing the Annexes of Directive 2009/45/EC, and to adapt their national provisions in order to ensure the full effectiveness of those amended technical requirements, the application should be deferred.
- (9) Directive 2009/45/EC should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Directive 2009/45/EC is amended as follows:

- (1) Annex I is replaced by the text in Annex I to this Regulation.
- (2) Annex II is replaced by the text in Annex II to this Regulation.

(3) Annex III is replaced by the text in Annex III to this Regulation.

Article 2

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

It shall apply from *[18 months after the entry into force]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19.11.2019

*For the Commission
The President
Jean-Claude JUNCKER*