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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) To maintain a high level of safety, and thereby passenger confidence, provided by common safety standards defined by Directive 2009/45/EC of the European Parliament and of the Council[(3)] and to preserve a level playing field, it is necessary to improve the application of that Directive. Directive 2009/45/EC should apply only to the passenger ships and craft for which the safety standards of that Directive were designed. A number of specific ship types should therefore be excluded from the scope of that Directive, and in particular tenders, sailing ships and ships transporting, for example to offshore installations, trained personnel who are not engaged in the business of the ship.

(2) Ship-carried tenders are used to ferry passengers from passenger ships directly to shore and back, taking the shortest safe sea route. They are not appropriate, and should not be used, for other types of services such as coastal sightseeing excursions. Such excursions should be undertaken by ships that meet the requirements for passenger ships of the coastal State, as stated, inter alia, by the IMO guidelines (MSC.1/Circ. 1417 on Guidelines for passenger ship tenders). Member States and the Commission should promote discussion at the IMO with a view to reviewing the guidelines in order to increase safety. The Commission should assess the need to make the guidelines mandatory.

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(3) Directive 2009/45/EC excludes passenger ships that are not propelled by mechanical means from its scope. Sailing ships should not be certified in accordance with that Directive where their mechanical propulsion is only intended for auxiliary and emergency use. The Commission should therefore assess the need for common European requirements for this category of passenger ship by 2020.

(4) Offshore installations are served by vessels that transport industrial personnel. Those industrial personnel are required to successfully complete a course of mandatory safety training and to satisfy certain mandatory medical fitness criteria. They should therefore be covered by different and specific safety rules that are outside the scope of this Directive. Member States and the Commission should actively support the ongoing work of the IMO in the field of safety standards for offshore vessels, further to IMO resolution MSC.418(97).

(5) The Regulatory Fitness and Performance Programme (REFIT) has shown that not all Member States certify aluminium ships under Directive 2009/45/EC. This creates an unequal situation that undermines the objective of achieving a common, high safety level for passengers sailing domestically in the Union. To avoid the non-uniform application arising from different interpretations of the definition of aluminium as an equivalent material and the applicability of the corresponding fire safety standards, resulting in different interpretations of the Directive's scope, the definition of ‘equivalent material’ in Directive 2009/45/EC should be clarified. Member States should be allowed to opt for stricter fire prevention measures in accordance with the provisions of this Directive concerning additional safety requirements.

(6) A significant number of passenger ships built in aluminium alloy provide regular and frequent maritime connections between different ports within a Member State. Because compliance with the requirements of this Directive would have serious consequences for such transport operations and the related socioeconomic conditions, as well as financial and technical implications for existing and new ships, those Member States should have the possibility to apply, for a limited period of time, national law to such passenger ships, while ensuring that the level of safety is adequately maintained.

(7) With a view to increasing legal clarity and consistency, and thereby increasing the level of safety, a number of definitions and references should be updated and further aligned with the related international or Union rules. In doing so, special care should be taken not to alter the existing scope of Directive 2009/45/EC. In particular, the definition of traditional ship should be better aligned with Directive 2002/59/EC of the European Parliament and of the Council[(4)], while preserving the current criteria of the year of built and type of material. The definition of pleasure yacht and craft should be better aligned with the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS Convention).

(8) In view of the principle of proportionality, the current prescriptive requirements derived from the 1974 SOLAS Convention have proven difficult to adapt to small passenger vessels below 24 metres in length. Furthermore, small ships are primarily built in materials other than steel. Therefore only a very limited number of such ships have been certified under Directive 2009/45/EC. In the absence of specific safety concerns and

adequate standards provided by Directive 2009/45/EC, ships below 24 metres in length should therefore be excluded from the scope of that Directive and should be subject to specific safety standards determined by Member States, which are better placed to assess the local limitations on navigation for those ships in terms of distance to coast or port and weather conditions. In determining those standards, Member States should take into account guidelines to be published by the Commission. Those guidelines should take into consideration any international agreements and conventions by the IMO, as appropriate, and should avoid introducing additional requirements that go beyond existing international rules. The Commission is invited to adopt such guidelines as soon as possible.

(9) To further simplify the definitions of sea areas provided for by Directive 2009/45/EC and to minimise the burden on Member States, redundant or inadequate criteria should be removed. While maintaining the safety level, the definition of sea areas in which ships of Class C and D may operate should be simplified by removing the criterion of 'where the shipwrecked persons can land' and by removing the 'distance to the place of refuge' for the purpose of defining the sea areas. The appropriateness of a particular coastline as a place of refuge is a dynamic parameter that can only be assessed on a case by case basis by Member States. Where necessary, any operational restrictions for a particular ship related to its distance from a place of refuge should be noted in the Passenger Ship Safety Certificate.

(10) Due to the specific geographical and weather characteristics and the high number of islands that need to be served regularly and frequently in Greece, both with the mainland or amongst them, and the ensuing high number of possible maritime connections, Greece should be allowed to derogate from the requirement of establishing sea areas. Instead, Greece should be allowed to classify passenger ships according to the specific sea route in which they operate, while maintaining the same criteria for classes of passenger ships and the same safety standards.

(11) To avoid unintended negative consequences of the current provisions, in accordance with which converted cargo ships may not be considered to be new passenger ships, it should be clarified that the conversion requirements apply not only to existing passenger ships but to any ship.

(12) Since, in accordance with Directive 2009/16/EC of the European Parliament and of the Council[(5)], a port State may inspect a passenger ship or a high-speed passenger craft flying a flag other than that of the port State, when engaged on domestic voyages, the specific provisions of Article 5(3) of Directive 2009/45/EC are redundant and should be deleted.

(13) In view of the differences in approach between the 1974 SOLAS Convention requirements on damage stability and the specific Union damage stability requirements for ro-ro passenger ships contained in Directive 2003/25/EC of the European Parliament and of the Council[(6)], the need for Directive 2003/25/EC and its added value should be assessed based on whether those 1974 SOLAS Convention requirements ensure the same safety level.

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(14) To increase the transparency and to facilitate the notification of exemptions, equivalencies and additional safety measures by Member States, a database should be established and maintained by the Commission. It should include the notified measures in their draft and adopted form. The adopted measures should be made publicly accessible.

(15) In view of the changes brought about by the Treaty on the Functioning of the European Union (TFEU), the powers conferred on the Commission to implement Directive 2009/45/EC should be updated accordingly. Implementing acts should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[7].

(16) In order to take account of developments at international level and experience and to increase transparency, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of not applying, for the purposes of this Directive, amendments to the international instruments, if necessary, and updating the technical requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(17) Since the specific references in Article 14 to ongoing work in the IMO have become obsolete, that Article should be deleted. However, the general objectives of international action to improve passenger ship safety and to establish a level playing field remain relevant and should be pursued, in accordance with the Treaties. To that end, the Member States and the Commission should work within the IMO framework to revise and to improve the regulations of the 1974 SOLAS Convention.

(18) It is important that any penalties laid down by Member States be properly implemented and be effective, proportionate and dissuasive.

(19) In view of the full monitoring cycle of European Maritime Safety Agency (EMSA) visits, the Commission should evaluate the implementation of Directive 2009/45/EC by 21 December 2026 and submit to the European Parliament and the Council a report thereon. Member States should cooperate with the Commission to gather all information that is necessary for that evaluation.

(20) In order not to impose a disproportionate administrative burden on landlocked Member States which have no seaports and which have no ships flying their flag that fall within the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. This means that as long as those conditions are fulfilled, they are not obliged to transpose this Directive.

(21) The human element is a fundamental part of ship safety and the procedures related to it. In order to maintain a high level of safety, it is necessary to take into account the link

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between safety, shipboard living, working conditions and training, including training related to cross-border rescue and emergency operations in line with international requirements. The Member States and the Commission should therefore play a proactive role at an international level in order to monitor and improve the social dimension for seafarers on board ships.

(22) In order to facilitate the implementation process, EMSA should support the Commission and the Member States in accordance with the relevant provisions of Regulation (EC) No 1406/2002 of the European Parliament and of the Council[8].

(23) Directive 2009/45/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/45/EC

Directive 2009/45/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

(a) "International Conventions" means the following conventions, including their Protocols and amendments thereto, in their up-to-date versions:

(i) the 1974 International Convention for the Safety of Life at Sea (the 1974 SOLAS Convention); and

(ii) the 1966 International Convention on Load Lines;;

(b) point (b) is replaced by the following:

(b) "Intact Stability Code" means the "Code on Intact Stability for all types of ships covered by IMO Instruments" contained in IMO Assembly Resolution A.749(18) of 4 November 1993, or the "International Code on Intact Stability, 2008" contained in IMO Resolution MSC.267(85) of 4 December 2008, in their up-to-date versions;;

(c) point (g)(ii) is replaced by the following:

(ii) their maximum speed, as defined in Regulation 1.4.30 of the 1994 High Speed Craft Code and Regulation 1.4.38 of the 2000 High Speed Craft Code, is less than 20 knots;;

(d) point (m) is replaced by the following:

(m) "bow height" means the bow height defined in Regulation 39 of the 1966 International Convention on Load Lines;;

(e) in point (q), the first subparagraph is replaced by the following: