

Passenger Ship Safety Legislative Review

Final Report

April 2011



Contracted by:
Specific Contract no.
MOVE/C1/2010-553/
SI2.581812

European Commission
Directorate-General for
Mobility and Transport
DM28 3/64
Brussels, Belgium

Contractor:

Grimaldi e Associati

Boulevard de Waterloo, 30
Brussels 1000
+ 32(0)25511201

Via Pinciana, 25
00198 Rome
+39 06844651

Via del Lauro, 9
20121 Milan
+39 02303551
www.grimaldieassociati.com

Sub-Contractors:

Cimmino Carnevale De Filippis
Studio Legale Associato
Via A. De Gasperi, 55
80133 Napoli

Jumelet Verhagen Advocaten
Vasteland, 38 a
3011 BM Rotterdam

Dingli & Dingli Law Firm
18/2 South Street,
Valletta VLT 1102, Malta

AMYA Abogados
Princesa, 61
28008 Madrid

**Main Authors
of the Report:**

Francesco Sciaudone
Riccardo Sciaudone

Dalila Frisani

Disclaimer:

This report was produced for DG Mobility and Transport and represents the Consultant views. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or DG Mobility and Transport's views, nor of the conformity of described practices with applicable EU law. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.

EXECUTIVE SUMMARY

BACKGROUND

Most passenger ship safety legislation of the European Union (EU), namely Directives 2009/45/EC (recast of Directive 1998/18/EC), 1998/42/EC, 1999/35/EC and 2003/25/EC (hereinafter also “the Directives”), is over 10 years old.

In brief:

- Directive 2009/45/EC¹ establishes a legal framework laying down harmonised safety rules and standards for passenger ships.
- Directive 1998/41/EC² aims at enhancing the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the EU, and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with effectively, by requiring that all persons on board any passenger ship which departs from a port located in a Member State shall be counted before that passenger ship departs.
- Directive 1999/35/EC³ defines a system of mandatory surveys capable of better ensuring the safe operation of regular ro-ro ferry and high-speed passenger craft services to or from ports in the Member States; providing the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties on these services.

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 (Recast), OJ L 163, 25 June 2009, pages 1–140.

² Council Directive 1998/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community, OJ L 188, 2 July 1998, pages 35–39.

³ Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, OJ L 138, 1 June 1999, pages 1–19.

- Directive 2003/25/EC⁴ aims at laying down a uniform level of specific stability requirements for ro-ro passenger ships, in order to improve the survivability of this type of vessels in case of collision damage.

In this context, the present Study “Passenger Ship Safety Legislative Review” (hereinafter “the Study”) has been awarded by the European Commission to Grimaldi e Associati (the “Contractor”) and is aimed at conducting an *ex-post* evaluation of the current legislation as well as identifying potential safety gaps that might need to be included in new EU legislation.

This Study is carried out in parallel with the initiative of the European Commission to undertake a comprehensive review of the above Directives, launched by a Member State working group which met for the first time on 28-29 June 2010, primarily to review the scope of Directive 2009/45/EC on safety rules and standards for passenger ships.

The scope of such review includes issues related to the necessity of specific rules for small ships, for ships made out of material other than steel, for sailing ships and other specific types of ships including operational issues, and for historic ships.

This Study is composed of two Parts. Part I is aimed at assessing whether the Directives served the purpose of establishing a high level of safety, removing barriers to trade and avoiding distortions of competition at a reasonable cost (i.e. were relevant, effective, efficient and useful) (*ex- post* evaluation).

Part II is aimed at considering the wider safety and related internal market issues which are not addressed by the current passenger ship safety legislation and at identifying any potential safety gaps and obstacles to the good functioning of the internal market.

In order to carry out the above *ex-post* evaluation, the Contractor has analyzed in the first place the national measures implementing the Directives in four selected Member States (namely, Italy, the Netherlands, Malta and Spain⁵). In parallel, a Questionnaire has been addressed to the competent maritime safety authorities of the

⁴ Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships, OJ L 123, 17 May 2003, pages 22–41.

⁵ Pursuant to EMSA (European Maritime Safety Agency) figures the passenger ships and Ro Ro ships flagged in Italy are 359. In the Netherlands they are 51. In Malta they are 73. In Spain they are 74. Figures of 2010.

four selected Member States and to stakeholders active at national and European level, and interviews have been carried out with those of the above maritime safety authorities and stakeholders who were available.

The same methodology has been applied in order to identify potential safety gaps and obstacles to the good functioning of the internal market: in particular desk research activity has aimed at identifying such gaps and obstacles, and a Questionnaire has been addressed to the above national competent maritime safety authorities and to stakeholders asking them to express their views on specific safety issues previously identified, while letting them also the possibility to indicate further issues that they would consider worth addressing by EU legislation.

PART I - FACTUAL CONCLUSIONS

Based on our research activity and on the results of our Survey carried out among national competent maritime authorities and stakeholders there is general satisfaction concerning the scope of the Directives and their impact.

In particular, it is possible to state that the Directives have been relevant, effective, efficient and useful.

As to the relevance, the efficiency and the utility, overall, it can be concluded that the aim pursued by the Directives can be considered achieved at a reasonable cost.

As to their effectiveness: the provisions of the Directives have been transposed in all Member States analysed, and penalties applied for infringement of national provisions transposing the measures of the Directives are in general considered appropriate.

That said, there is a significant degree of agreement that some amendments to the current legislative framework are necessary: in particular, such amendments concern Directive 2009/45/EC and Directive 1999/35/EC.

As to Directive 2009/45/EC, its scope should be expanded to cover ships made of material other than steel, historic and sailing ships. This Directive indeed does not apply *inter alia* to vessels built in material other than steel or equivalent, to the so

called “historic” or “traditional ships”⁶ and to ships “not propelled by mechanical means”.

This legislative gap gives rise to obstacles to the internal market, as the above ships need to comply with different national safety standards within the EU. Furthermore the lack of EU wide standards applicable to such ships might allow sub-standard ships to operate in the EU.

In addition, the Contractor believes it is necessary to adopt a more comprehensive legislative approach in respect of small ships: indeed, on one hand there are neither European rules nor specific international ones that apply to vessels that carry less than 12 passengers, nor there are European rules that apply to existing⁷ ships of less than 24 metres; on the other hand there is a significant degree of agreement on the fact that the standards laid down by Directive 2009/45/EC with respect to new ships that carry more than 12 passengers but are below 24 metres in length are excessive, and that better targeted standards should be adopted for such ships.

In the light of all above it seems that an EU legislative initiative aimed at setting standards for all ships that carry passengers on a commercial basis and are below a certain threshold in length would be beneficial.

Indeed, on one hand it would address a safety gap that in turn creates obstacles to the internal market related to the total absence of EU rules for vessels designed for passengers, which carry less than 12 passengers, and for existing ships having a length of below 24 meters. On the other hand an EU intervention on small ships would allow the latter to lay down better targeted safety standards for new ships carrying more than 12 passengers and having a length of below 24 metres which are currently subject to the strict standards of Directive 2009/45/EC.

As to Directive 1999/35/EC, some improvements could be suggested in order to improve the efficiency of the regime introduced by this Directive: in this respect it seems appropriate to reduce the number of standards surveys imposed by the Directive and to assess the possibility of harmonizing the regime introduced by this Directive

⁶ “Original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials”: Article 3 of the Directive.

⁷ Pursuant to Directive 2009/45/EC existing ship means “a ship which is not a new ship”; while new ship means “a ship the keel of which was laid or which was at a similar stage of construction on or after 1 July 1998”, (Article 2).

with the one introduced by Directive 2009/16/EC⁸, which in turn lays down a regime of surveys to be carried out by Member States acting as port States and is aimed at reducing sub-standard shipping in the waters under the jurisdiction of such States.

The Survey also identifies issues that do not require an amendment of the current legislative framework, but where a clarification effort is necessary. In particular it was pointed out that some of the definitions provided by Directive 2009/45/EC should be clarified, such as the definition of port areas and the one of high-speed passenger craft (Article 2), as lack of clarity leaves to Member States the possibility to tolerate practices that should not be allowed under the Directive, or in any case leaves too much discretion in implementing the Directive.

In addition, the EU should assess the opportunity of issuing guidelines for the execution of the surveys under Directive 2009/45/EC, perhaps imposing delays within which surveys have to be completed, as it seems that in some Member States such surveys are not carried out in an efficient way.

Finally, the Contractor remarks that while a general satisfaction has been expressed by maritime safety authorities as to the effectiveness of the Directives, and in particular of the penalties applied at national level for infringement of national measures implementing the above Directives, it was not possible to verify such statements due to the lack of data available on the results of controls carried out by national authorities on ships subject to the Directives. Neither were available records of the penalties imposed.

PART I - RECOMMENDATIONS

Although the current legislative framework on the safety of passenger ships has given positive results and seems to have addressed most of the safety issues that affect passenger ships, which also constituted an obstacle to the realization of an integrated market for passenger transport services, some amendments are perceived as necessary to achieve a higher level of safety in a fully integrated internal market.

⁸ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control, OJ L 131, 28 May 2009, pages 57–100.

Such amendments mainly concern Directive 2009/45/EC, whose scope needs to be extended to adapt it to technological improvements and market trends, in particular the tendency to build new ships in composite material.

However, they also concern issues that are not new but that were not sufficiently addressed when Directive 1998/18/EC was originally adopted: namely the necessity to adopt well targeted standards for small ships and a comprehensive solution to address the needs of the niche market for transport of passengers by historic and sailing ships.

Some amendments could be foreseen also to improve the efficiency of the regime laid down by Directive 1999/35/EC. In particular it seems that there is a need to harmonize the system of surveys put in place by this Directive with the one put in place by Directive 2009/16/EC on port State control, and maybe to provide for more surprise inspections.

Improvements that can be made without amending the legislative framework

Based on the findings of the Survey it might be useful to clarify some of the notions contained in Directive 2009/45/EC by providing Guidelines on:

- The meaning of port areas.
- The definition of high speed passenger craft: in this respect it should be specified that, provided that the other conditions of the Directive are fulfilled, if a passenger craft exceeds the speed limit set by the Directive, then the craft has to comply with the requirements of the Directive, and that national practices allowing craft not compliant with the Directive to exceed the speed limit of 20 knots are unlawful.
- The criteria according to which the surveys required by the Directive (Article 12) have to be carried out: in this respect for example it could be useful to establish timeframe by which surveys have to be completed, as it seems that in some Member States procedures in this respect are lengthy and this can constitute a cost for the industry. Furthermore it could be appropriate to require

Member states to ensure coordination among the authorities responsible for carrying out the surveys.

Changes to the legislative framework

Based on the findings of the Survey some changes to the current legislative framework are necessary.

In particular, *at a minimum*, it seems that the EU should consider intervening and addressing the following issues.

As to Directive 2009/45/EC:

- to amend the Directive with the aim of adopting a definition of small ships and of re-adapting its requirements in order to make them suitable for vessels of less than 24 metres. With the occasion it could be appropriate to consider applying such standards also to vessels carrying less than 12 passengers;
- to define appropriate requirements for vessels constructed in materials other than steel;
- to adopt specific measures for historic ships and sailing ships;
- to consider adopting a comprehensive legislative solution that would be applicable to the above ships when engaged on domestic as well as intra-European voyages.

As to Directive 1999/35/EC:

- it is suggested that in order to improve the efficiency of the Directive, provisions should be included to increase surprise inspections, that is to say without previous communication, and to reduce standard inspections, harmonizing them with surveys required under Directive 2009/16/EC.

Finally, the Contractor believes that in order to verify the level of enforcement at national level of all the Directives under assessment it could be beneficial to require

Member States to submit a report every two years giving account of the number of infringements detected by the competent authorities and of the penalties imposed.

This report should include a description of enforcement activities, including information on the number of checks and problems with particular routes.

In this respect it will be useful to recall that currently the results of ro-ro passenger ship surveys are uploaded by Member States into the central EMSA (European Maritime Safety Agency) database including whether any infringements were noted. However, this information is not analysed and used and a biennial report might encourage Member States to elaborate on such figures.

It is posited in agreement that if a database on infringements of the Directives will be in place in the future it will make easier to assess also the effectiveness of the penalties applied in different Member States and would allow the identification of best practises within the EU in this respect.

PART II - FACTUAL CONCLUSIONS

As announced, Part II of the Study aims at identifying safety gaps and related internal market issues.

Based on our research activity it is possible to identify some outstanding issues that have not been addressed by the current legislation on passenger ships' safety.

As already explained above, the fact that EU legislation does not cover ships that carry less than 12 passengers, ships built in other material than steel or equivalent, historic ships and sailing ships, is generally perceived as a safety gap, which in turn gives rise to serious obstacles to the internal market that should be addressed at EU level.

In addition our research analysis showed that there are other outstanding issues that the EU should consider addressing or at least continue monitoring closely.

This reference is to some vessels for which specific standards are generally perceived as necessary, namely tenders for large passenger ships, ships carrying offshore workers and ships engaged in polar waters.

It is known that within the International Maritime Organization (IMO)⁹ works are on-going to deliver specific rules for the above vessels.

However, in this respect, while we agree that in the maritime sector global standards are an optimal solution and that the adoption of regional rules might cause a fragmentation of maritime law, we believe that the EU should consider at least laying down appropriate standards for some of the above ships namely tenders for large passengers ships and ships carrying offshore workers, as it seems that at international level such rules will not be adopted in a reasonable timeframe or will not be adopted at all.

On the contrary we do not believe that at least at the moment the EU should adopt specific rules for ships engaged in polar waters, but that it could be useful to extend the scope of international requirements to domestic voyages in polar waters, once such requirements will be finally adopted.

Indeed we are concerned that EU measures covering only European flagged cruise ships would not have the effect of improving the level of safety of navigation in polar waters, but would push EU operators to register their cruise ships in third countries in order to avoid the application of stricter EU rules, thus resulting in a damage to EU economy. The situation could change substantially if the EU were to adopt specific measures targeting ships leaving from EU ports or bound to the EU ports located in polar areas. However we believe that it should not be neglected that the adoption of specific legislation by the EU addressing vessels operating in EU ports would incentivise operators to avail themselves of third countries' ports, as cruises to the polar areas are long voyages in general and it could be economically more viable for operators to operate in ports located in third countries than to operate in EU ports and having to comply with EU legislation.

Moreover, an EU intervention in respect of ships operating in polar waters might be seen as a duplication, as efforts at international level are going in the direction of increasing the level of safety of ships operating in such waters, and the IMO is developing a Code laying down mandatory requirements for such vessels.

⁹ The IMO is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. In 1948 an international conference in Geneva adopted a convention formally establishing IMO (the original name was the Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to IMO).

An outstanding issue is also the fact that some of the EU legislation on passenger ships' safety and in particular Directive 2009/45/EC is not applicable to ships engaged on intra-European routes. The latter have to comply with international rules and namely with the standards laid down in the 1974 International Convention for the Safety of Life at Sea ("the SOLAS Convention", hereinafter also "IMO SOLAS rules" or "SOLAS rules")¹⁰, as amended.

Indeed, Directive 2009/45/EC applies only to ships engaged on domestic voyages (i.e. "*a voyage in sea areas from a port of a Member State to the same or another port within that Member State*", Article 2) and a voyage between two ports located in two different Member States is considered as an international voyage, thus covered by IMO SOLAS rules.

This situation gives rise to some concerns as ships engaged on intra-European routes are submitted to a different regime in respect than ships engaged on domestic routes, and this difference is not justified on safety grounds as a domestic voyage may be longer than an intra-European one¹¹.

It is posited that this situation seems in contrast with the objectives of the Treaty on the Functioning of the European Union (TFEU), and in particular with the principles on the internal market aimed at creating an EU integrated market, *inter alia*, for the provision of services and in particular of transport services, as the necessity to comply with different rules depending on the domestic or the intra-EU nature of a voyage to be undertaken represents a cost for EU operators. Consequently, it indirectly prevents many operators from providing transport services between Member States, to the detriment of the realization of a fully integrated internal market.

However, the special features of the maritime transport sector, warrants a careful approach to the issue of ships engaged on intra-EU routes according to the Contractor. Indeed, an EU regime setting safety standards for ships engaged on intra-European

¹⁰ The International Convention for the Safety of Life at Sea (SOLAS) is an international maritime safety treaty. SOLAS requires flag States to ensure that ships under their flag comply with the requirements of the Convention and its annexes, and to inspect and survey ships, and issue certificates of seaworthiness. In addition every ship when in port is subject to the control of port authorities, which verify that certificates issued are valid. Valid certificates have to be accepted unless there are grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the certificate (see Section 10).

¹¹ The distance between two ports located in two different Member States can easily be lower than 10 miles, while a domestic voyage can easily involve a distance of 500 miles.

routes would interfere with the international regime governed by the SOLAS Convention, as passenger ships carrying more than 12 passengers and engaged on international voyages, such as intra-EU voyages currently are, have to comply with the international standards laid down in the IMO SOLAS Convention.

If the EU were to extend the scope of Directive 2009/45/EC, all ships engaged on intra-EU routes would have to comply instead with European standards and carry the relevant certificates, while all ships engaged in voyages between an EU port and a third country one would be subject to SOLAS rules.

In addition, the decision of the EU to extend the scope of Directive 2009/45/EC would have an impact on ships registered in third countries which should comply with EU rules if engaged on intra-EU routes, and this might cause some tension with third States which accept in their ports EU flagged ships simply complying with SOLAS rules.

In this respect the decision to extend the scope of Directive 2009/45/EC could include a provision making both SOLAS Certificates and EU certificates valid for intra-EU journeys.

PART II - RISK ASSESSMENT

The analysis carried out in Part II of this Study allows us to identify four areas where a prompt intervention of the EU is generally perceived as necessary and urgent: in particular the EU should address issues concerning the safety of ships made of material other than steel, small ships, historic ships and sailing ships engaged on domestic and intra-European routes.

Indeed, in this respect, it has been concluded that non-action at EU level is not an option as the current legal framework does not ensure a high uniform level of safety and the existence of different national rules that apply to such ships represents an obstacle to the internal market.

Based on these findings this Study has considered three different options for possible EU legislative intervention in the field of safety of passenger ships: namely a

mutual recognition option, the option of legislation setting essential requirements and the one of full harmonization.

In particular, we have identified the critical factors and main risks associated with the adoption of:

- I. EU measures simply imposing the mutual recognition of safety certificates issued by another Member State, attesting that a ship complies with the applicable national safety requirements: basically such an option would imply that once a ship complies with the requirements of the flag State, other Member States could not prevent, on the ground of alleged safety deficiencies, this ship from operating in their jurisdiction.
- II. EU measures aimed at harmonizing Member States' legislation on the safety of passenger ships, i.e. at coordinating the legal and administrative regulations of the Member States to tackle anomalies in the internal market. In turn, as harmonization can have a limited or a far reaching scope, we have considered critical factors and risks associated with two options for harmonization, namely:
 - The adoption of EU legislation aimed at setting the essential safety requirements to which ships must conform, in order to enjoy free movement throughout the EU.
 - The adoption of EU legislation imposing specific standards to which ships have to comply to freely circulate in the EU and within each Member State: this approach has been followed by the EU in adopting Directive 2009/45/EC.

Mutual recognition

The mutual recognition principle guarantees free movement of goods and services without the need to harmonize Member States' national legislation.

Mutual recognition of safety standards means that if ships are allowed to operate in a Member State they would automatically receive an equal treatment in other Member States.

According to the Contractor, it is possible to assert that the following factors would be crucial for opting for EU legislative intervention simply imposing the mutual recognition of safety certificates issued by Member States attesting compliance by a ship made of material other than steel, a small ship, a historic ship and a sailing one to their national safety rules.

On the one hand a system based on the principle of mutual recognition would have the advantage of granting flexibility, ensuring that ships can be engaged on domestic voyages and intra-European voyages, without having to comply with different safety rules.

However, in the absence of IMO SOLAS specific rules for small ships, ships made of material other than steel, sailing and historic vessels, EU legislation could not oblige Member States to recognize safety certificates issued by other Member States on the basis of compliance with international standards, but merely impose the recognition of certificates issued by other Member States on the basis of their national legislation.

Therefore, there is a high risk that opting for mutual recognition would not ensure a high level of safety as it would give a competitive advantage to the ships registered in Member States with lower safety standards, which would be free to provide their services in other Member States despite stricter legislation applicable to national ships in the latter. This could in turn imply a decrease in the level of safety of passenger ships in the EU.

Despite of all above it seems that mutual recognition would be the best option for historic ships, and for existing ships made of material other than steel, small ships and sailing vessels.

In this respect we have noticed in our Survey that most of the criticism expressed towards EU legislation referred to the fact that the standards imposed by the latter have often applied also to existing ships, and this has represented a cost for the industry. Therefore, we believe that EU intervention concerning existing ships should impose the mutual recognition of safety certificates and not harmonize safety standards, imposing new ones.

EU legislation setting essential requirements

In a European Union context, the term harmonization refers to the coordination of the legal and administrative regulations of the Member States to tackle anomalies in the internal market.

Harmonization can be limited to the adoption, by means of Directives based on the TFUE, of the essential safety requirements (or other requirements in the general interest) with which products put on the market must conform, and which should therefore enjoy free movement throughout the EU.

This approach has for example been followed by EU legislation simply providing that a product shall meet the essential safety, health, environmental protection and consumer protection requirements, without fixing the exact way such a product should be built, but establishing the criteria to follow in the designing of the product in order to avoid specified risks.

In this framework the EU could adopt a Directive setting essential safety requirements that Member States would have to impose on small ships, ships made of material other than steel, sailing and historic ships without prescribing at European level specific technical standards.

This option would have the advantage of leaving Member States some flexibility in adopting standards that would be appropriate for ships registered in their own country and operating in their ports and could ensure a high level of safety.

However, it would not exclude at all the possibility that Member States could require ships to comply with standards adopted at national level, as Member States would be left the option to adopt specific safety requirements when they find it necessary, in view of the specific features of the waters under their jurisdictions.

In addition, experience shows that “essential requirements” are not always perfect in their conception and expression, and it is very difficult to conceive essential

requirements that are uniformly and directly enforceable. In this respect we believe that this option would be not appropriate for historic ships.

Finally, this option reduces but does not exclude the possibility that vessels registered in a Member State with the lowest standards, but still complying with the essential requirements imposed by the EU, would have a competitive advantage over ships registered in Member States with higher safety standards within the internal market.

Harmonization of safety requirements

Finally, harmonization can be extensive, imposing specific standards with which ships have to comply, as is the case of Directive 2009/45/EC.

Under this option the EU could address safety gaps and related obstacles to the internal market concerning small ships, ships made of material other than steel, and sailing ships, harmonizing safety standards applicable to such ships when engaged on domestic and intra-European voyages, for example expanding the scope of Directive 2009/45/EC¹².

Such an approach would ensure a high level of safety and eliminate to a greater extent the existing obstacles to the internal market.

In addition, the adoption of standards at EU level has in general a concrete effect in terms of improving ship safety, because the EU legal system has enforcement tools that, for example, the IMO has not. Thus, while the adoption of safety standards at international level does not necessarily have a concrete impact on the safety of ships, the adoption of EU rules would have a concrete impact.

In addition, the adoption of specific legislation would enable the EU to take the lead and set an example to third countries in the area of safety.

This option would be likely to be criticized by the industry, which expressed doubts about the technical competence of the European legislator to adopt safety standards in the area and in general asserted that safety standards should be dealt with

¹² This option has not been considered for historic ships.

by IMO, on the basis that regional initiatives are not appropriate in the maritime transport sector.

In this context one could also express concern for example that the adoption of unilateral measures, applicable also to ships flagged in third countries could have as an effect that also third countries will adopt unilateral measures in this respect. Therefore ships complying with EU standards would have to comply also with the standards of third countries when operating in their ports.

Despite of all above, we believe that harmonization of safety requirements for new ships made of material other than steel, small ships and sailing ships would be the best solution as it would ensure a high level of safety in an integrated internal market, and as the lack of specific international standards for such ships currently hampers the possibility to freely transport passengers from a port of a State to the one of another, and an EU intervention would not alter the international regulatory framework applicable to such ships.

Possible options for tenders of large passenger ships and vessels carrying offshore workers

The Study found that it is also necessary to address safety gaps or lack of clarity with respect to rules applicable to tenders of large passenger ships and to ships carrying offshore workers.

There is indeed a lack of clarity on which rules should apply to such ships, and the solutions adopted so far are not comprehensive and satisfactory.

In this context, in the absence of satisfactory international standards an EU legislative intervention for tenders of large passenger ships and for ships carrying offshore workers could for example refer to new vessels and be limited in scope and address specific issues, while referring to international standards elaborated by the IMO for those aspects that are addressed in an appropriate way by IMO instruments.

Such measures, given the necessity to eliminate barriers to intra-EU trade should apply also to vessels engaged on intra-EU routes.

On the contrary, a mutual recognition option could be appropriate for existing large passenger ship tenders and vessels carrying offshore workers. In this respect Member States should be required to allow vessels certified in other Member States as tenders and as vessels carrying offshore workers to operate in their ports.

For new passenger ships tenders we suggest that the intervention could for example require Member States to authorize a ship complying with the LSA Code or to other standards that the IMO will adopt to operate as a tender if it also complies with Chapter II-1 of the SOLAS Convention (Construction, Structure, subdivision and stability, machinery and electrical installations) and to the requirements of Chapter II-2 of the above Convention (Fire protection, fire detection and fire extinction).

For vessels carrying offshore workers, EU legislation addressing new ships could for example identify the SOLAS Convention standards with which ships registered to carry industrial personnel (as for example offshore workers) should comply, and identify which provision of other specific international Codes laying down standards for special purpose vessels should also be applicable to such vessels.

List of Abbreviations

ACAP (*Associazione Cabotaggio Armatori Partenopei*)

AN.CA.NA.P (*Associazione Nazionale Cantieri Navali Privati*)

BOE (*Boletín Oficial del Estado* [Official Journal])

BAD (Dutch Official Journal)

Cod. nav. (*Codice di Navigazione* [Maritime Law Code])

D.Lgs. (*Decreto Legislativo* [Legislative Decree])

D.M. (*Decreto Ministeriale* [Ministerial Decree])

D.P.R. (*Decreto del Presidente della Repubblica* [Decree of the President of the Republic])

ECJ (European Court of Justice)

ECR (European Court Reports)

EU (European Union)

IMO (International Maritime Organization)

G.U. (*Gazzetta Ufficiale* [Official Journal])

NSI (National Shipping Inspectorate)

OJ (Official Journal)

PRM (passengers with reduced mobility)

R.D. (*Regio Decreto* [Royal Decree])

SDC (Code of Safety for Dynamically Supported Craft)

TFEU (Treaty on the Functioning of the European Union)

UNCLOS (1982 United Nations Convention on the Law of the Sea)

Table of Contents

Passenger Ship Safety Legislative Review	i
EXECUTIVE SUMMARY	iv
BACKGROUND	iv
PART I - FACTUAL CONCLUSIONS	vi
PART I - RECOMMENDATIONS	viii
Improvements that can be made without amending the legislative framework	ix
Changes to the legislative framework	x
PART II - FACTUAL CONCLUSIONS	xi
PART II - RISK ASSESSMENT	xiv
Mutual recognition	xv
EU legislation setting essential requirements	xvii
Harmonization of safety requirements	xviii
Possible options for tenders of large passenger ships and vessels carrying offshore workers	xix
List of Abbreviations.....	xxi
1 INTRODUCTION.....	28
1.1 Background	28
1.2 The need for this Study	31
1.3 This report	33
1.4 Structure of this part of the report	33
PART I	35
2 RESEARCH METHODOLOGY.....	36
2.1 Introduction	36
2.2 Overview of the approach	36
2.3 Desk research	37
2.4 Stakeholders' input.....	38
3 EU LEGISLATIVE FRAMEWORK AND ITS IMPLEMENTATION AT NATIONAL LEVEL: ITALY, THE NETHERLANDS, MALTA AND SPAIN ...	43
3.1 Directive 2009/45/EC (Recast of Directive 1998/18/EC).....	43
3.1.1 The provisions of the Directive	43
3.1.2 Transposition of the Directive in Italy	47
3.1.3 Transposition of the Directive in the Netherlands	48

3.1.4	Transposition of the Directive in Malta	49
3.1.5	Transposition of the Directive in Spain.....	51
3.2	Directive 1998/41/EC.....	52
3.2.1	The provisions of the Directive.....	52
3.2.2	Transposition of the Directive in Italy	55
3.2.3	Transposition of the Directive in the Netherlands	55
3.2.4	Transposition of the Directive in Malta	56
3.2.5	Transposition of the Directive in Spain.....	57
3.3	Directive 1999/35/EC.....	58
3.3.1	The provisions of the Directive.....	59
3.3.2	Transposition of the Directive in Italy	61
3.3.3	Transposition of the Directive in the Netherlands	61
3.3.4	Transposition of the Directive in Malta	62
3.3.5	Transposition of the Directive in Spain.....	63
3.4	Directive 2003/25/EC.....	64
3.4.1	The provisions of the Directive.....	64
3.4.2	Transposition of the Directive in Italy	65
3.4.3	Transposition of the Directive in the Netherlands	66
3.4.4	Transposition of the Directive in Malta	66
3.4.5	Transposition of the Directive in Spain.....	67
4	STAKEHOLDERS' VIEWS ON POLICY ISSUES.....	69
4.1	Introduction	69
4.2	Directive 2009/45/EC: Relevance, Effectiveness, Efficiency, Utility	70
4.2.1	Relevance	70
4.2.2	Effectiveness	74
4.2.3	Efficiency	76
4.2.4	Utility	77
4.2.5	Sustainability.....	80
4.3	Directive 1998/41/EC: Relevance, Effectiveness, Efficiency, Utility	80
4.3.1	Relevance	80
4.3.2	Effectiveness	81
4.3.3	Efficiency	82
4.3.4	Utility	83
4.4	Directive 1999/35/EC: Relevance, Effectiveness, Efficiency, Utility	84

4.4.1	Relevance	84
4.4.2	Effectiveness	86
4.4.3	Efficiency	87
4.4.4	Utility	88
4.5	Directive 2003/25/EC: Relevance, Effectiveness, Efficiency, Utility	89
4.5.1	Relevance	89
4.5.2	Effectiveness	90
4.5.3	Efficiency	91
4.5.4	Utility	92
4.6	Other comments provided by stakeholders while answering Questionnaire no. 2, or submitting a position paper	93
5	SUMMARY OF FACTUAL CONCLUSIONS	96
5.1	Introduction	96
5.2	Relevance, effectiveness, efficiency and utility of Directive 2009/45/EC.....	97
5.3	Relevance, effectiveness, efficiency and utility of Directive 1998/41/EC.....	99
5.4	Relevance, effectiveness, efficiency and utility of Directive 1999/35/EC...	100
5.5	Relevance, effectiveness, efficiency and utility of Directive 2003/25/EC...	100
5.6	Conclusions	101
6	RECOMMENDATIOIS.....	103
6.1	Overview	103
6.2	Measures to improve the enforcement of the legislative framework	104
6.3	Other improvements that can be made without amending the legislative framework	104
6.4	Changes to the legislative framework	104
	PART II.....	106
7	RESEARCH METHODOLOGY.....	107
7.1	Introduction	107
7.2	Overview of the approach	107
7.3	Desk research	109
7.4	Stakeholders' inputs	109
8	SAFETY GAPS AND RELATED OBSTACLES TO THE INTERNAL MARKET	115
8.1	Introduction	115
8.2	Small ships and sailing ships.....	116

8.3	Ships made of material other than steel	119
8.4	Historic ships and traditional sailing vessels.....	120
8.5	Tenders for large passenger ships	123
8.6	Ships carrying offshore workers	127
8.7	European registered cruise ships operating in polar areas	131
8.8	Ships engaged on intra-European routes	135
9	STAKEHOLDERS' VIEWS ON EXISTING SAFETY GAPS AND RELATED OBSTACLES TO THE INTERNAL MARKET	138
9.1	Introduction	138
9.2	Questions concerning the impact and the scope of Directive 2009/45/EC ..	138
9.2.1	Comments from Member States maritime safety authorities.....	139
9.2.2	Comments from other stakeholders.....	140
9.3	Questions concerning the impact of Directive 1999/35/EC.....	142
9.3.1	Comments from Member States' maritime safety authorities	143
9.3.2	Comments from other stakeholders.....	143
9.4	Questions concerning the impact of Regulation no. 4055/86/EEC.....	144
9.4.1	Comments from Member States maritime safety authorities.....	144
9.4.2	Comments from other stakeholders.....	144
9.5	Questions concerning the impact of Regulation no. 3577/92/EEC.....	145
9.5.1	Comments from Member States maritime safety authorities.....	145
9.5.2	Comments from other stakeholders.....	145
9.6	Questions concerning the impact of Regulation no. 789/2004/EC	145
9.6.1	Comments from Member States' maritime safety authorities	146
9.6.2	Comments from other stakeholders.....	146
9.7	Questions of general scope.....	147
9.7.1	Comments from Member States maritime safety authorities.....	148
9.7.2	Comments from other stakeholders.....	149
9.8	Factual conclusions	150
10	COMPETENCES OF THE EU IN THE MARITIME SECTOR AND THE RELATIONSHIP BETWEEN EU LAW AND INTERNATIONAL LAW	154
10.1	Introduction	154
10.2	Competences of the EU.....	157
10.3	EU Competences in the maritime transport sector.....	157
10.4	EU law and international law	161

10.5	Conclusions	164
11	DEFINITION AND EVALUATION OF LEGISLATIVE OPTIONS.....	167
11.1	Introduction	167
11.2	Mutual recognition, legislation establishing essential requirements, harmonization.....	169
11.3	Evaluation of possible scenarios	171
11.3.1	Ships made of material other than steel	171
11.3.2	Small ships and sailing ships.....	176
11.3.3	Historic ships.....	180
11.4	Other issues for which the possibility to adopt EU measures should be further assessed	181
11.4.1	Tenders for large passenger ships	181
11.4.2	Vessels carrying offshore workers	182
11.5	Conclusions	183
	BIBLIOGRAPHY	186
	ANNEXES.....	190

1 INTRODUCTION

1.1 Background

Transport is one of the EU's foremost common policies. It is now governed by Title VI (Articles 90 to 100) of the Treaty on the Functioning of the European Union (TFEU). Since the Rome Treaty's entry into force in 1958¹³, this policy has been focused on eliminating borders between Member States and to therefore contribute to the free movement of individuals and goods. Its principal aims are to complete the internal market, ensure sustainable development, extend transport networks throughout Europe, maximise use of space, enhance safety and promote international cooperation. Since the 2001 White Paper, which was revised in 2006, this policy area has been orientated towards harmoniously and simultaneously developing the different modes of transport, in particular with co-modality, which is a way of making use of each mean of transport (ground, waterborne or aerial) to its best effect.

In this context, maritime transport policy plays a crucial role as Europe is the world's leading sea power conducting, pursuant to relatively recent figures, some 90 percent of its trade with the rest of the world and 40 percent of its internal trade, by sea¹⁴.

Further to several large-scale maritime incidents involving passenger ships, the EU has adopted rules intended to improve passenger safety whilst maintaining the freedom to provide services in the internal market¹⁵.

The following legislative acts address safety issues specific to passenger ships' safety:

¹³ As known the Treaty of Rome, establishing the European Economic Community (EEC), signed in Rome on 25 March 1957, entered into force on 1 January 1958.

¹⁴ Communication from the Commission - Third package of legislative measures on maritime safety in the European Union, COM(2005)585.

¹⁵ Namely, the well known tragedy of the RoPax ferry Estonia in 1994 and of the Herald of Free Enterprise in 1987.

- Directive 2009/45/E¹⁶, recently amended by Directive 2010/36/EU¹⁷, establishes a legal framework laying down harmonised safety rules and standards for passenger ships. It aims to meet the need to improve the safety of maritime passenger transport. It repeals and replaces Directive 98/18/EC¹⁸.
- Directive 1998/41/EC¹⁹ aims at enhancing the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the EU and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with effectively. Pursuant to Article 4 all persons on board of any passenger ship leaving from a port located in a Member State shall be counted before that passenger ship departs.
- Directive 1999/35/EC²⁰ defines a system of mandatory surveys capable of better ensuring the safe operation of regular ro-ro ferry and high-speed passenger craft services to or from ports in the Member States; providing the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties on these services.
- Directive 2003/25/EC²¹ aims at laying down a uniform level of specific stability requirements for ro-ro passenger ships, in order to improve the survivability of this type of vessel in case of collision damage and provides a high level of safety for the passengers and the crew.

¹⁶ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (Recast), OJ L 163, 25 June 2009, pages 1–140.

¹⁷ Commission Directive 2010/36/EU of 1 June 2010 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships, OJ L 162, 29 June 2010, pages 1–135.

¹⁸ Council Directive 1998/18/EC of 17 March 1998 on safety rules and standards for passenger ships, OJ L 144, 15 May 1998, pages 1–115.

¹⁹ Council Directive 1998/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community, OJ L 188, 2 July 1998, pages 35–39.

²⁰ Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, OJ L 138, 1 June 1999, pages 1–19.

²¹ Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships, OJ L 123, 17 May 2003, pages 22–41.

The following acts address general internal market issues to the maritime transport sector:

- Regulation 4055/86/EEC²² gives Member State nationals (and non-Community, now EU, shipping companies using ships registered in a Member State and controlled by Member State nationals) the right to carry passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State or of a non-Community (now EU) country, requiring that any current national restrictions which reserve the carriage of goods to vessels flying the national flag are to be phased out.
- Regulation 3577/92/EE²³ grants freedom to provide maritime transport services within a Member State (maritime cabotage) for Community shipowners operating ships registered in a Member State and flying the flag of that Member State, subject to these ships complying with all the conditions for carrying out cabotage within that Member State.
- Regulation 789/2004/EC²⁴ introduces measures that facilitate the transfer of cargo and passenger ships within the European Union in order to reduce costs and administrative procedures, reconciling considerations relating to the internal market such as the elimination of technical barriers to the transfer of ships between the registers of the Member States, and requirements relating to maritime safety (high level of ship safety and environmental protection).

It is acknowledged that with the adoption and subsequent implementation of the 3rd Maritime Safety Package, the EU has now one of the world's most comprehensive and advanced regulatory framework for shipping.

²² Council Regulation (EEC) no. 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31 December 1986, pages 1–3.

²³ Council Regulation (EEC) no. 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364, 12. December 1992, pages 7–10.

²⁴ Regulation (EC) no. 789/2004 of the European Parliament and of the Council of 21 April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No. 613/91, OJ L 138, 30 April 2004, pages 19–23.

However, as recently recognized by the European Commission²⁵ “the growth of the fleet, the entry into service of very large carriers for the transport of both passengers and freight and the exponential growth in shipping operations will significantly add to the pressure on maritime safety” and therefore some actions need to be taken *inter alia* in order to prioritise the enforcement of existing EU and international rules and the speedy implementation of measures introduced with the Third Maritime Safety Package and to increase the effectiveness of EU involvement in the IMO and reinforce international cooperation with EU trading and shipping partners, promoting a shared maritime safety culture and common efforts, e.g. on port-state control inspections, in particular with neighbouring countries.

In this context the Commission has launched a passenger ship safety legislative review, aimed also at examining legislative instruments involving passenger safety issues, and in particular at evaluating the possibility of an extension of the scope of Directive 2009/45/EC.

1.2 The need for this Study

The scope of the Study is twofold. The first part is aimed at assessing to what extent European legislation, namely Directives 2009/45/EC, 1998/41/EC, 1999/35/EC, 2003/25/EC (hereinafter also “the Directives”), has been relevant, effective and efficient and served the purpose of establishing a high level of safety, removing barriers to trade and avoiding distortions of competition (*ex-post* evaluation).

The second part is aimed at considering the wider safety and related internal market issues involved with passenger ships of whatever type, which are not addressed by the current legislation and to identify any potential safety gaps and obstacles to the good functioning of the internal market. In this respect the Study also focuses on ships engaged in intra-Community (now EU) transport.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategic goals and recommendations for the EU’s maritime transport policy until 2018, COM/2009/0008.

The *ex-post* evaluation will serve as base for the review of some EU passenger safety legislation (Directives 2009/45/EC, 1998/41/EC, 1999/35/EC).

In particular, in executing this task the Study will help the Commission to assess:

- i. the relevance of the legislation adopted at EU level, i.e. its appropriateness in consideration of the problems it intended to solve;
- ii. its effectiveness, i.e. the capacity of each of the instruments to attain the objective for which it was introduced;
- iii. its efficiency, i.e. the fact that the expected effects of such legislation were obtained at a reasonable cost;
- iv. its utility, i.e. an assessment of the impact achieved by each legislative instrument having regard to the needs and problems identified.

Sub b) the Study assesses, in the light of the goals to ensure greater passenger ship safety and the good functioning of the internal market, the need to adapt the existing legislative framework to technical innovations that have occurred in the ship building sector and to the political and economic developments that have occurred at international level.

As to the necessity to adapt the existing legislation to technical innovation, it should be considered that EU and international ship safety rules cover only passenger ships built from steel, while currently ships are built also from glass reinforced plastic and therefore subject to different national legislations and such a framework is able to hinder the objective of the EU internal market for passenger vessels.

As to international issues, it should be taken into account that passenger ships engaged in international transport are subject to IMO SOLAS rules and as such rules are agreed by many flag states and stakeholders, they do not always ensure the highest safety standards. Furthermore as IMO has no means of enforcing compliance with its rules, such rules have been transposed into EU Regulations.

In particular, the Study assesses whether the scope of application of the European ship safety legislation namely Directive 2009/45/EC should be expanded so as to include, *inter alia*, ships that are built from other materials than steel, and the scope of application of European passenger ship safety legislation should be expanded to cover all intra-European routes that are currently governed by IMO SOLAS rules.

1.3 This report

This report is the final report of the Study.

1.4 Structure of this part of the report

The rest of the report is structured as follows:

- I. Part I contains an *ex-post* evaluation of Directives 2009/45/EC, 1998/41/EC, 1999/35/EC and 2003/25/EC.
- II. Part II contains an analysis of safety gaps and of related obstacles to the good functioning of the internal market.

Part I is structured as follows:

- Section 2 summarizes the methodology for the first part of this Study;
- Section 3 summarizes the EU legislative framework on passenger ship safety and its implementation in the four selected Member States;
- Section 4 summarizes the stakeholders' views on the EU pieces of legislation being assessed, and on possible policy measures;
- Section 5 summarizes the conclusions; and
- Section 6 sets out our recommendations.

Part II is structured as follows:

- Section 7 summarizes the methodology for the second part of this Study;
- Section 8 gives an overview of possible safety gaps and related obstacles to the internal market identified *inter alia* through desk research activities;
- Section 9 summarizes stakeholders' views on possible existing safety gaps and related obstacles to the internal market;

- Section 10 describes EU competence in the maritime transport sector and the relation between EU law and international law, with the aim of assessing which typologies of measures could the EU possibly adopt in order to address the safety gaps and related obstacles to the internal market identified in the Study;
- Section 11 identifies and compares different possible scenarios for EU legislative action aimed at enhancing the safety of passenger ships, identifying which factors should be crucial for opting for each of the scenarios compared and carrying out a risk assessment of the different scenarios compared.

PART I

2 RESEARCH METHODOLOGY

2.1 Introduction

This section provides a summary of the research methodology used with respect to Part I of the Study. It describes:

- the overall approach used;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the Study, and how they have provided their input.

2.2 Overview of the approach

The Commission requested us to answer a number of questions, most of which can be categorised as either relating to:

- the relevance of the legislation adopted at EU level;
- its effectiveness;
- its efficiency;
- its utility.

In order to address these questions, we developed a research methodology divided into two parts:

- desk research; and
- interviews and analysis.

The rationale for this division is that in order to assess the EU legislative framework on passenger ships it was necessary to analyze the national measures implementing EU Directives 2009/45/EC, 1998/41/EC, 1999/35/EC and 2003/25/EC.

In addition, it was necessary to take into account maritime authorities and stakeholders' views on the way the legal framework has worked and is working.

Such activities have been carried out in four selected Member States: Italy, the Netherlands, Malta and Spain. Such Member States have been selected to provide a representative sample in terms of large and small Member States as well as older and more recent Member States.

The choice of the above Member States is based on the following:

- the invitation to tender sent by the European Commission required the carrying out of a series of interviews in their national language with the maritime safety competent authorities of four selected Member States: two large, two small;
- the importance of passenger ship transport in every Member State: in this respect Italy is the country with the highest number of passenger ships that are live and on order books. On the other hand Malta and the Netherlands are small Member States which have the highest number of ships that are live and on order books among EU small Member States²⁶;
- the geographic location: Spain's coasts are surrounded by the Mediterranean Sea and the Atlantic Ocean, which implies that the country has jurisdiction on cross border waters presenting varying sea conditions.

2.3 Desk research

The following information has been collected and analysed through desk research:

- information about the appropriateness of national transposing measures and of their application in the four selected Member States;

²⁶ EMSA figures.

- data about case law which the application of the Directives has given rise to and issues related to its application.

In the context of desk research we have reviewed national legislation in order to identify which provisions of the Directive have not been transposed correctly.

2.4 Stakeholders' input

Relatively little information is publicly available relating to the issues we have been asked to address and therefore we have relied extensively on information and opinion provided by stakeholders on a voluntary basis. This section summarizes the stakeholders which have contributed to the Study, and how they have contributed. This is divided as follows:

- National maritime authorities;
- Shipowners, other operators and representative associations.

We would like to thank all of the stakeholders that contributed to the Study.

National Maritime Authorities

We contacted the national maritime authorities in four selected Member States, namely Italy, the Netherlands, Malta and Spain, in order to obtain information on the application of the Directives, on their appropriateness in consideration of the problems they intended to solve; on the capacity of each of the instruments to attain the objective for which they were introduced; on their effects and costs; and on their impact in consideration of the needs and problems that had been identified.

In the four Member States selected as case studies we provided the national maritime authorities with one questionnaire which was followed up with a telephone interview where necessary. Given the complexity of the questions answered most of the national maritime authorities have replied to the above questionnaire in writing.

TABLE 1 STAKEHOLDER INTERVIEWS: NATIONAL MARITIME AUTHORITIES

<i>Member State</i>	<i>Organization</i>	<i>Form of Input to Study</i>
<i>Italy</i>	Direzione Generale delle Capitanerie di Porto	Written submission*
	Autorità Portuali (Port Authorities) (authority of Savona, Trieste, Ancona, Naples, La Spezia, Salerno, Livorno, Brindisi, Messina, Palermo, Venice, Ravenna, Catania, Taranto)	No reply
<i>The Netherlands</i>	Ministry of Transport **	Written submission
<i>Malta</i>	Merchant Shipping Directorate	Interview
<i>Spain</i>	Dirección General de la Marina Mercante (DGMM)	Written submission
	Sasemar (Maritime Security Agency)***	Written submission

* The submission was indeed jointly submitted by the Direzione Generale delle *Capitanerie di Porto* and the Italian Ministry of Infrastructure and Transport

* * Under this Ministry falls the Shipping Inspectorate

* **Agency part of the Ministry of Transport (Fomento)

Other stakeholders

We consulted with maritime stakeholders, mostly shipowners and industry associations in order to obtain information on the application of the Directives in their Member State.

We sought to include:

- The top operators in each of the four Member States selected;
- The main industry associations in most of the four selected Member States.

Table 2 lists the stakeholders we have approached; it also lists the business sector on which they are active. They were given the opportunity to respond even if only in part, but some decided not to respond.

TABLE 2 STAKEHOLDER INTERVIEWS: SHIPOWNERS, OTHER OPERATORS AND INDUSTRY ASSOCIATIONS

<i>Stakeholder</i>	<i>Business sector</i>	<i>Bases in case Study</i>	<i>Type of participation</i>
Confitarma (Confederazione Italiana Armatori)	Italian Shipowners' Association	Italy	Written Submission
KVNR (Royal Association of Dutch Shipowners)	Shipowners' Association	The Netherland	No reply
DFDS Seaways BV	Passenger mini-ferries and Ro-Ro	The Netherland	No reply
Stena Line BV	Ferry Company	The Netherland	No reply
Wagenborg Passagiersdiensten BV	Ferry Company	The Netherland	No reply
Rederij Doeksen	Ferry Company	The Netherland	No reply

Virtu Ferries Limited	Operators of High Speed craft and passenger ferries,	Malta	Interview
Gozo Channel Company Limited	Ferry Company	Malta	No reply
Anave (Shipowners association)	Shipowners' Association	Spain	Written submission
Balearia	Ferry Company	Spain	No reply
Fred Olsen	Ferry Company	Spain	Written submission
Euro Ferrys	Ferry Company	Spain	No reply
FRS	Ferry Company	Spain	No reply
Naviera Armas	Shipping Company	Spain	No reply
Pullmantur	Tour operator	Spain	No reply
Trasmediterranea	Ferry Company	Spain	Written submission

We also included stakeholders active at European level, listed in Table 3 below. They were provided with the questionnaire and were given a deadline to reply. They were given the opportunity to respond even if only in part, but some decided not to respond.

TABLE 3 STAKEHOLDER INTERVIEWS: SAKEHOLDERS ACTIVE AT EUROPEAN LEVEL

<i>Organization</i>	<i>Full name</i>	<i>Represents</i>	<i>Type of participation</i>
CESA	Community of European Shipyards Associations	Representative organisation of associations of	No reply

	shipbuilding industry		
ECC	European Cruise Council	Associations representing the leading European cruise companies	Written submission
ECSA	European Community Shipowners' Associations	Committee representing European shipowners' associations	No reply

3 EU LEGISLATIVE FRAMEWORK AND ITS IMPLEMENTATION AT NATIONAL LEVEL: ITALY, THE NETHERLANDS, MALTA AND SPAIN

3.1 Directive 2009/45/EC (Recast of Directive 1998/18/EC)

3.1.1 The provisions of the Directive

Directive 2009/45/EC (in this paragraph “the Directive”), recently amended by Directive 2010/36/EU, establishes a legal framework introducing a uniform level of safety of life and property on new and existing passenger ships and high speed passenger craft when engaged on domestic voyages. It aims to meet the need to improve the safety of maritime passenger transport. It repeals and replaces Directive 1998/18/EC²⁷.

The Directive applies to passenger ships and craft (new passenger ships; existing passenger ships of 24 metres in length and above and high-speed passenger craft), which, regardless of their flag, are engaged on domestic voyages. It does not apply *inter alia* to passenger ships intended for military purposes; pleasure yachts which do not carry more than 12 passengers and are intended for non-commercial purposes; passenger ships and craft without means of mechanical propulsion or of primitive build or constructed in material other than steel or equivalent; historical ships or individual replicas thereof; craft of war and troopcraft, pleasure craft and craft exclusively engaged in port areas.

Each European Union (EU) Member State, as host State, shall ensure that passenger ships and high-speed passenger craft flying the flag of a State which is not a Member State, comply with the requirements of the Directive before they may be engaged on domestic voyages in that Member State (Article 3).

²⁷ Council Directive 1998/18/EC of 17 March 1998 on safety rules and standards for passenger ships, OJ L 144, 15 May 1998, pages 1–115.

Passenger ships are divided into four different classes (A, B, C and D) according to the sea area(s) in which they are authorised to operate. Each EU country shall establish and maintain a list of sea areas which are under its jurisdiction. They shall indicate the sea areas where the operation of ships is allowed for part or all of the year. This list shall be made public on the website of the EU country's competent maritime authority. The Commission shall be informed of the publication of this list and any amendments made to.

For high speed passenger craft Article 4 of the Directive refers to the categories defined in Section 1 of the High Speed Craft Code 1994, or in Section 1 of the High Speed Craft Code 2000.

Pursuant to the Directive EU countries shall authorise the operation of passenger ships or high-speed passenger craft covered by the Directive which meet the safety rules and standards laid down therein. As host States, they shall recognise safety certificates (namely the High Speed Craft Safety Certificate and Permit to Operate issued by another Member State for high-speed passenger craft, when engaged on domestic voyages or the Passenger Ship Safety Certificate referred to in Article 13 of the Directive issued by another Member State for passenger ships when engaged on domestic voyages) (Article 5).

The Directive sets out detailed safety requirements which new and existing passenger ships of Classes A, B, C and D and high speed passenger craft must meet. These requirements cover ship construction, maintenance machinery, electrics, fire protection and life saving equipment (Article 6)²⁸. It also imposes general requirements and load line requirements. Such standards are included in the 1974 SOLAS Convention, the International Convention on Load Lines and in Annex I of the Directive.

As to ro-ro passenger ships, Article 7 requires that all ro-ro passenger ships of Classes A, B, and C, the keel of which was laid or which were at a similar stage of construction on or after 1 October 2004 shall comply with Articles 6, 8 and 9 of

²⁸ For the construction and maintenance of the hull, main and auxiliary machinery, electrical and automatic plants, the Directive requires that new and existing passenger ships of Classes A, B, C and D comply with the standards specified for classification by the rules of a recognised organization, or equivalent rules used by an Administration in accordance with Article 14(2) of Directive 1994/75/EC. The same is provided with respect to the requirements to be complied with as far as construction and maintenance of high-speed passenger craft are concerned.

Directive 2003/25/EC, which has introduced strengthened stability requirements for ro-ro passenger vessels operating on international services to and from Community ports. Specific temporary provisions are instead laid down for ro-ro passenger ships of Classes A and B the keel of which was laid or which were at a similar stage of construction before 1 October 2004.

Furthermore, the Directive obliges Member States to take specific measures to ensure that persons with reduced mobility have safe access to all classes of passenger ships and high-speed passenger craft operating a public transport service. In order to do this, EU countries shall, as far as possible, apply the guidelines laid down in Annex III of the Directive and present a national action plan for the implementation of these guidelines (Article 8).

Member States have some flexibility with regard to the application of safety requirements. They may, as part of a specific procedure laid down by the Directive, take measures intended to: improve safety requirements; authorise equivalents for the detailed rules included in Annex I of the Directive; and exempt ships from some specific requirements for domestic voyages made in that country's sea areas under certain predetermined conditions (Article 9).

A passenger ship or craft in compliance with the Directive may be suspended from operation or obliged to take additional safety measures if an EU country considers that there is a risk for persons, property or the environment (Article 9).

For those ships registered in an EU country (flag State), that EU country shall carry out several types of survey upon new or existing passenger ships (Article 12):

- initial survey;
- an annual survey;
- additional surveys if necessary.

High-speed passenger craft are also subject to surveys by the EU country in which they are registered according either to the “High-Speed Craft (HSC) Code” or the “Code of Safety for Dynamically Supported Craft (SDC)”.

Following an initial survey, a safety certificate (Passenger Ship Safety Certificate) shall be issued for a period of 12 months by the EU flag State to new or existing

passenger ships. The renewal of the certificate shall be subject to annual surveys (Article 13).

The EU flag State shall grant a High Speed Craft Safety Certificate and a Permit to Operate to high-speed passenger craft meeting the requirements of the High-Speed Craft Code, and a DSC Construction and Equipment Certificate and a DSC Permit to Operate to those complying with the requirements of the DSC Code (Code of Safety for Dynamically Supported Craft).

Article 14 deals with procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages. In this respect it provides that the Community shall submit requests to the IMO:

- (a) to expedite the ongoing work within the IMO to revise the regulations of Sections II-1, II-2 and III of the 1974 SOLAS Convention, as amended, containing issues left to the discretion of the Administration, to establish harmonized interpretations for those regulations and to adopt amendments to the latter accordingly; and
- (b) to adopt measures for mandatory application of the principles underlying the provisions of MSC Circular 606 on Port State Concurrence with SOLAS Exemptions.

The requests referred to in paragraph sub (a) shall be made by the Presidency of the Council and by the Commission, on the basis of the harmonised regulations laid down in Annex I.

Member States are required to do their utmost to ensure that the IMO undertakes the development of the said regulations and measures expeditiously.

Finally, Article 15 requires Member States to lay down a system of effective, proportionate and dissuasive penalties for breaching the national provisions adopted pursuant to the Directive and to take all the measures necessary to ensure that those penalties are applied.

3.1.2 Transposition of the Directive in Italy

Directive 2009/45/CE has codified and recast Directive 1998/18/EC and its subsequent substantive amendments in the interests of clarity. Implementation at national level in Italy and in the other Member States must be related to, and focused on, the specific implementation of Directive 1998/18/EC and of subsequent amendments.

Directive 1998/18/EC has been transposed in Italy by Legislative Decree no. 45/2000²⁹. The provisions of the Decree apply to new and existing ships in Italy from 7 March 2000.

Article 4 of Directive 2009/45/EC has been implemented by Decree no. 750/2005³⁰ by the *Comandante Generale del Corpo delle Capitanerie di Porto-Guardia Costiera* (Head of the Coast Guard). This Decree has adopted the definitive list of sea areas provided in Article 4, ordering the list to be published on the Official Journal and made available on www.guardiacostiera.it.

The authority responsible for ensuring that ships comply with the provision of the Directive (releasing certificates and controlling that ships carry the relevant certificates) is the Coast Guard (*Capitaneria di Porto*).

Legislative Decree no. 45/2000 does not provide for specific penalties for infringement of the Directive. However the law allows the inspectors who find deficiencies to order compliance with the safety standards imposed by the Directive. Indeed, in case of infringement of the provisions of the Decree, Article 1231 of the Italian Maritime Code (*Codice della Navigazione*³¹) applies. This Article lays down criminal penalties for infringement of safety rule. Such penalties are arrest up to three months and a fine of up to 206 Euros. For some infringements of the Decree, the

²⁹ D.Lgs. 4 February 2000, no. 45, *Attuazione della direttiva 98/18/CE relativa alle disposizioni e alle norme di sicurezza per le navi da passeggeri adibite a viaggi nazionali*, G. U. 7 March 2000, no. 55. See also D.M. 23 November 2010 no. 236, *Attuazione dell'articolo 5 del decreto legislativo 4 febbraio 2000, n. 45 e successive modificazioni, recante attuazione della direttiva 98/18/CE, come rifiuta dalla direttiva 2009/45/CE relativa alle disposizioni e alle norme di sicurezza per le navi da passeggeri adibite a viaggi nazionali*, G.U. 10 January 2011, no. 6.

³⁰ Decree of 19 September 2005, no. 750, available at: <http://www.guardiacostiera.it/servizi/normatindex.cfm>.

³¹ R.D. 30 March 1942, no. 327, G.U. 18 April 1942, no. 93.

penalties contained in Law no. 616/62 also apply³²: namely imprisonment of up to one year or a fine of up to 123 Euros (Articles 32, 33 and 34).

There is no record of any court decision in Italy concerning the application of the above mentioned legislation.

From the inquiries we have made the implementation does not appear to have caused any problems.

3.1.3 Transposition of the Directive in the Netherlands

The Regulation Safety Seagoing Vessels³³ based on the Ships Decree³⁴ has implemented Directive 1998/18/EC.

This Regulation came into force on 1 January 2005 and has been amended by a Regulation of 1 October 2010³⁵, the most recent amendment being a consequence of Directive 2009/45/EC.

The list of sea areas required by Article 4 of the Directive has recently been adjusted and was published as an annex to the Regulation Safety Seagoing Vessels³⁶. The map can be found in Easy rules, via the NSI (Shipping Inspectorate) website: www.ivw.nl.

The Regulation incorporates Directive 2009/45/EC (originally Directive 1998/18/EC) in full, except for those articles that do not require to be implemented.

Penalties for infringement of national measures implementing Directive 1998/18/EC (now 2009/45/EC) are laid down in the Shipping Act (Article 52 through

³² Law 5 June 1962, no. 616, *Sicurezza della navigazione e della vita umana in mare*, G. U. 5 July 1962, no. 168.

³³ Regulation of 16th December 2004, no. HDJZ/SCH/2004-2755 as published in the Government Gazette 2004, 248.

³⁴ Royal Decree of 18 June 2004, BAD 2004, 284.

³⁵ Government Gazette 2010, 14690.

³⁶ Government Gazette 2010, 20447.

58), Articles 57 and 59 of the Regulation Safety Seagoing Vessels and Articles 7, 8 and 11 of the Foreign Ships Act ³⁷.

In particular, if a ship does not comply with the requirements of the Directive, it can be detained, and its operations can be stopped. The captain has to moor his ship at a place designated by the relevant authority, and the ship cannot be moved afterwards without the approval of the authority. Violation of this provision can lead to imprisonment of up to 2 years. A ship can be detained until it complies with the relevant requirements.

In addition, if a ship under the Dutch flag is inspected by the NSI and found to be not meeting the requirements of the Directive, the certificates are withdrawn.

There is no record of any court decision in the Netherlands concerning the application of the above mentioned legislation.

From the inquiries we have made the implementation does not appear to have caused any problems.

3.1.4 Transposition of the Directive in Malta

Directive 1998/18/EC has been transposed in Maltese law by virtue of the Code of Practice for the Safety of Commercial Vessels (hereinafter “the Code”)³⁸ which has been issued in terms of the Commercial Vessels Regulations 2002 (hereinafter the “Commercial Vessels Regulations”) which have been made under the Authority for Transport in Malta Act (Chapter 499 of the Laws of Malta).

In order to facilitate the updating of the Code, the Commercial Vessels Regulations provide for an amendment mechanism by virtue of which amendments may be made from time to time by the issuance of the relative notices. Otherwise, the requirements of the Code will be reviewed as required from time to time and if necessary revised within five years of its coming into force through the enabling

³⁷ As most recently amended by Act of 7 July 2010, BAD 339.

³⁸ The laws of Malta are available on: www.justice.gov.mt or www.doi.gov.mt.

legislation (Section 3.6 of the Code). Currently, the Code is in its tenth edition, such edition having been issued in July, 2010.

The national measures contained in the Code of Practice that implement the provisions of the Directive apply to new passenger ships since 9 September 2009 and to existing passenger ships since 9 September 2009.

Article 4 of Directive 2009/45/EC has been implemented by the Authority for Transport in Malta. This Authority has adopted the definitive list of sea areas provided at Article 4, ordering the list to be published on the Authority's website and made available on request.

Section 6 of the Commercial Vessels Regulations prohibit the use of a vessel by any person or causing or permitting the owner of a vessel to ply for reward or hire within the ports, internal or territorial waters of Malta unless such vessel is certified in terms of the Code of Practice.

This is in line with the obligation imposed in the Directive wherein the Member State shall ensure that the prescribed ships (passenger ships and high-speed passenger craft) fully comply with the Directive before they may be engaged on domestic voyages within the Member State.

In terms of Section 31.2.4 of the Code, the Authority for Transport in Malta will issue a Commercial Vessel Certificate (or Passenger Ship Safety Certificate, where applicable) certifying that the vessel complies with the provisions of the Code.

The Authority for Transport in Malta is responsible for issuing the certificate provided in Article 13 of the Directive and for ensuring that ships carry the required certificates and for imposing penalties in case of infringement of the national measures transposing the Directive.

In line with Article 15 of the Directive which imposes on Member States the obligation to lay down the applicable penalties for infringement, the Commercial Vessels Regulations provide for penalties in Section 62³⁹. Any person who fails to comply with any of the requirements laid down in the Commercial Vessels Regulations or any of the conditions subject to or upon which a licence or certificate is issued in

³⁹ These penalties apply also to infringement of the national measures implementing Directive 2009/45/EC (the Code of Practice) because the Regulations which provide for penalties state that the Code of Practice shall form part of the Regulations and shall be enforceable as part of the laws of Malta.

terms of the Regulations shall for a first offence be liable to a fine of around 2,300 Euros for each such offence, and in the case of a continuing offence or offences, to a further fine of around 1,170 Euros for each offence for every day or part thereof. In case of any contravention committed by the Master or Owner of a vessel, the Court has the power to order the sequestration of the vessel for not more than three months at the expense of the Owner. In the case of a second or subsequent conviction for any contravention, the Court is also empowered to cancel the licence or certificate, or suspend the same for any time. The Commercial Vessels Regulations also provide that when any offence was committed by a body of persons or body corporate, the director, manager or other similar officer or person purporting to act in such capacity of the body of persons or body corporate shall be guilty of the offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

3.1.5 Transposition of the Directive in Spain

Council Directive 1998/18/EC has been implemented at a national level in Spain by “*Real Decreto 1247/1999, de 16 de Julio, sobre reglas y normas de seguridad aplicables a los buques de pasaje que realicen travesías entre puertos españoles*”⁴⁰.

According to its “*Disposición final segunda*”, the *Real Decreto* no. 1247/1999 entered into force on 7 August 1999.

In compliance with Article 4 of the Directive the list of sea areas was published on the BOE (*Boletín Oficial del Estado*), on 26 May 2004 and no additional official amendments to the list have been introduced. The list of sea areas has been published on BOE (web site: www.boe.es), the official site to publish all the applicable legislation in Spain, on Wednesday, 26 May 2004.

Spain has not made use of Article 9 of the Directive, which concerns additional safety requirements, equivalents, exemptions and safeguard measures.

⁴⁰ *BOE* no. 187, of 6 August 1999.

Controls under Article 12 of the Directive are enforced in Spain by the “*Dirección General de la Marina Mercante*” (DGMM) and fully comply with the Directive’s requirements. The DGMM is an administrative agency subject to the *Ministerio de Fomento*, and it also issues certificates under Article 13 in the case of Spain’s flagged vessels.

In accordance with Article 13 of Royal Decree 1247/1999, the legal regime applicable to infringement and penalties in Spain regarding this subject matter is contained in Law no. 27/1992 (LPEMM)⁴¹. Regarding infringements, Article 13 of Royal Decree 1247/1999 establishes that infringements against Royal Decree 1247/1999 (and, therefore, the Directive) will be considered either very severe infringements (“*infracción muy grave*”) (Article 116.2 LPEMM, letters a) and h)) or severe infringements (“*infracción grave*”) (Article 115.2, LPEMM letter k)). Severe infringements are fined with penalties of up to 180,303 Euros and very severe infringements with penalties of up to 901,518 Euros.

There is no record of any court decision in Spain concerning the above mentioned legislation and from the inquiries we have made the implementation does not appear to have caused major problems.

3.2 Directive 1998/41/EC

3.2.1 The provisions of the Directive

Directive 1998/41/EC (in this paragraph “the Directive”) aims at enhancing the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the EU and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with effectively.

It applies to passenger ships with the exception of ships of war and troop ships, and pleasure yachts unless they are or will be crewed and carry more than twelve passengers for commercial purposes (Article 3).

⁴¹ *Ley 27/1992, de 24 de noviembre, de Puertos del Estado y de la Marina Mercante* (LPEMM), BOE no. 283, of 25 November 1992.

Pursuant to Article 4 all persons on board any passenger ship which departs from a port located in a Member State shall be counted before that passenger ship departs.

In addition, before the passenger ship departs the number of persons on board shall be communicated to the master of the passenger ship and to the company's passenger registrar or to a shore-based company system that performs the same function.

Article 5 lists the information that shall be recorded regarding every passenger ship that departs from a port located in a Member State to undertake a voyage of more than twenty miles from the point of departure and communicated after the passenger ship's departure to the company's passenger registrar or to a shore-based company system that performs the same function.

Article 6 establishes a set of obligations that apply to Member States:

- they have to, as regards every passenger ship that flies their flag and departs from a port located outwith the Community and is bound for a port located within the Community, require the company to ensure that the above information is provided in compliance with the above rules;
- they have to, as regards every passenger ship that flies the flag of a third country and departs from a port located outwith the Community and is bound for a port located within the Community, require the company to ensure that the above information is collected and maintained so that it is available to the designated authority when needed for purposes of search and rescue and in the aftermath of an accident.

It also limits the discretion of Member States to grant an exemption or derogation relating to the information concerning passengers to a ship flying its flag arriving at a port located within the Community from a port located outwith the Community, under the relevant SOLAS provisions. In this respect it provides that Member States may grant exemptions only under the conditions laid down for exemptions or derogations in the Directive.

Article 7 imposes on ships masters to ensure before a passenger ship departs from a port located in a Member State that the number of persons on board does not exceed the number the passenger ship is permitted to carry.

Article 8 imposes obligations on companies to put in place a system for collecting the information required by the Directive.

Article 9 confers to Member States the power to lower the twenty miles threshold provided above and to grant exemptions.

However it establishes that when a decision lowering that threshold involves journeys between two ports in different Member States, such decision has to be taken jointly by those two Member States (Article 9).

Member States are also entitled to provide for exemptions for ships operating in protected areas provided that some conditions concerning the duration of the services are fulfilled.

The Directive authorizes Italy to adopt specific provisions for regular services crossing the Strait of Messina.

Pursuant to paragraph 4 Member States are also allowed to request the Commission to derogate from the provisions of the Directive that impose the obligation to collect information when they consider it impracticable for companies to record such information, provided that specific conditions are fulfilled.

Article 10 requires Member States to carry out random checks on the proper functioning of the registration systems set up pursuant to the Directive within their territories, and to designate the authority to which the companies covered by the Directive shall communicate the information required by the Directive.

Article 11 sets the criteria that the registration systems shall meet, namely: readability, availability, facilitation and security.

Finally, Article 14 requires Member States to lay down a system of effective, proportionate and dissuasive penalties for breaching the national provisions adopted pursuant to the Directive and to take all the measures necessary to ensure that those penalties are applied.

3.2.2 Transposition of the Directive in Italy

Directive 1998/41/EC has been implemented, in Italy, by D.M. (Ministerial Decree) 13 October 1999⁴² entitled “Registration of persons on board passenger ships engaged in voyages to and from ports of the Member States”. The provisions of this D.M. apply in Italy from 1 January 2000 and are fully in line with the provisions Directive 1998/41/EC.

The authority responsible for ensuring that vessels comply with the provisions of the D.M. is Coast Guard (*Capitaneria di Porto*).

From the point of view of the sanctions, no specific fine for the breach of national provisions has been set out, since the Directive has been implemented through a Ministerial Decree which does not provide for specific sanctions measures.

In the case of acknowledged violations, they are subject to the sanctions provided by national law: namely Article 1231 of the Italian Maritime Code (imprisonment of up to three months or a fine of up to 206 Euros).

There is no record of any court decision in Italy concerning the application of the above mentioned legislation.

3.2.3 Transposition of the Directive in the Netherlands

Article 30 of the Regulation Safety Seagoing Vessels based on the Ships Decree has implemented Directive 1998/41/EC.

Article 30 reads that the owner of a passenger ship provides a system for the registration of passenger data, which complies with Directive 1998/41/EC.

Furthermore the owner is required to take care of the appointment of a passenger registration officer as referred into Article 2 of Directive 1998/41/EC, who is responsible for the duties mentioned in Article 8 of the Directive.

⁴² D.M. 13 ottobre 1999, *Recepimento della direttiva 98/41/CE del Consiglio del 18 giugno 1998, relativa alla registrazione delle persone a bordo delle navi da passeggeri che effettuano viaggi da e verso i porti degli Stati membri della Comunità*, G.U. 25 October 1999, no. 251.

The owner shall ensure that the passenger data are at all times immediately available to be passed on to the appropriate authority for search and rescue operations in case of an emergency or after an accident.

The owner shall also ensure that further data with respect to persons having declared to be in need of special care or assistance in case of emergency situations are properly registered and that these data will be passed on to the master before the passengers ship sets of.

Personal details of passengers are stored no longer than necessary in connection with search and rescue activities.

There is no record of any court decision in the Netherlands in application of the above mentioned legislation.

Penalties for infringement of national measures implementing the Directive 1998/41/EC are laid down in the Ships Act.

In this Act the supervision is dealt with in Articles 10 to 17 which deal with supervision over the obedience of the rules. All ships are under permanent supervision of the Government. The inspectors of the Shipping Inspectorate are allowed to detain a vessel in case of a violation of the rules.

3.2.4 Transposition of the Directive in Malta

Council Directive 1998/41/EC was transposed into Maltese law by the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations of 1 November 2002 as subsequently amended, hereinafter in this paragraph referred to as the “Regulations”.

The Regulations apply since 1 November 2002 to any:

- (a) Maltese passenger ship wherever it may be; and
- (b) other passenger ship while it is within the territorial waters of Malta.

The Authority for Transport in Malta is responsible for verifying that vessels comply with the provisions of the Regulations and for ensuring that ships carry the

required certificates and for imposing penalties in case of infringement of the national measures transposing the Directive.

The Regulations fully transpose Directive 1998/41/EC into Maltese law, and with regard to penalties for any breach of the provisions of the Regulations, penalties of an administrative nature may be fixed and imposed by the Registrar-General of Shipping.

3.2.5 Transposition of the Directive in Spain

Directive 1998/41/EC has been implemented at a national level in Spain by Royal Decree no. 665/1999 (hereinafter, in this section, also “RD”)⁴³. According to its “*Disposición final segunda*”, the Royal Decree entered into force on 15 May 1999.

The implementation has basically followed the Directive’s contents, subject to the following comments:

1. Article 2 of the Directive (Article 2 RD) regarding “definitions” has not been implemented in full.
2. Under Article 2a RD, the definition of ‘passenger ship’ includes both high speed and non-high speed ships.
3. The RD’s scope of application (Article 3) is more extensive than the Directive, since it applies to the carriage of passengers by sea performed by: a) passenger ships, irrespective of their flag, from a Spanish port to a Spanish port or any other EU Member State port; b) passenger ships flagged in Spain sailing from a non EU Member State port to an EU Member State port; and c) passenger ships flagged in a third State sailing from a port outside of the EU and bound for a Spanish port.
4. Article 7.1 RD requests that the information regarding the number of passengers be kept by the shipping companies during a period of three months after the voyage was finished. Also, according to Article 7.2 RD, the information recorded under Article 6 RD (Article 5 of the Directive) must be

⁴³ *Real Decreto 665/1999, de 23 de abril, por el que se regula el registro de personas que viajan a bordo de buques de pasaje, BOE no. 115, of 14 May 1999.*

kept until the next day following the end of the voyage, except when an emergency arises, in which case the information must be kept as long as it is needed.

Article 8 RD nominates SASEMAR (“*Sociedad de Salvamento y Seguridad Marítima*”) as the ‘designated authority’.

In relation to Articles 9.1 and 9.2 of the Directive, the RD has not exempted shipping companies from any of the obligations established by the Directive, or made use of the other powers conferred by Article 9 to Member States. Article 9 RD grants to the “*Ministerio de Fomento*” the power to do so by means of an “*Order Ministerial*”.

The RD (*Disposición adicional segunda*) offers a different and broader wording regarding Article 9.4 of the Directive. According to such *Disposición adicional segunda*, the *Dirección General de la Marina Mercante* (Spain’s Central Maritime Authority) may request the European Commission to derogate, wholly or partly, from the requirement of recording the information mentioned in Article 6 RD (Article 5 of the Directive) when a) the shipping company provides evidence of the impracticability of putting in place the information recording system given the special characteristics of the transport service and b) navigation is of a short duration and the annual probability of the significant wave height’s exceeding two metres is less than 10%.

In relation to Article 14 of the Directive (penalties), Article 10 RD says that infringements will be judged according to the rules contained in Law no. 27/1992. Infringements covered by the RD will be classified either as severe or very severe and may be sanctioned with a fine of up to 180,303 Euros (severe infringements) or up to 901,518 Euros (very severe infringements).

There is no record of any court or maritime authorities’ decision in Spain concerning the above mentioned legislation: indeed there have been no major operations in Spain of search and rescue of ship passengers during the last few years.

3.3 Directive 1999/35/EC

3.3.1 The provisions of the Directive

Directive 1999/35/EC (in this paragraph “the Directive”) aims at defining a system of mandatory surveys capable of better ensuring the safe operation of regular ro-ro ferries and high-speed passenger craft services to or from ports in the Member States; providing the right for Member States to conduct, participate in or cooperate with any investigation of maritime casualties on these services.

It applies to all ro-ro ferries and high-speed passenger craft operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on domestic or international voyages in sea areas of Class A (Article 3). Member States may extend the scope of application to domestic voyages in other sea areas, provided that they do not discriminate in respect of the flag of the ships or on the nationality or place of establishment of the company.

The Directive provides that, prior to the start of operation of a regular ro-ro ferry or high-speed passenger craft service, host states must carry initial verifications in relation to ro-ro ferries and high-speed passenger craft (Article 4) and to companies (Article 5).

Article 4 requires *inter alia* host States to check that the above ro-ro ferries or high-speed passenger craft carry valid certificates issued by the administration of the flag State or by a recognised organization acting on its behalf, and comply with the standards specified for classification by the rules of a recognised organization, or rules accepted as equivalent by the administration of the flag State for construction and maintenance of their hull, machinery and electrical and control installation.

As to companies, Article 5 requires the host State to check that companies operating or intending to operate the above ferries or craft: (a) take the measures necessary for the application of the specific requirements listed in Annex 1 (right of the master to take the necessary decisions, log of navigational activities and incidents, reporting of damage to shell doors, providing elderly and disabled persons on board the craft with general information about the services to assist them, etc); (b) agree in advance that the host State or any other Member State particularly concerned may carry out, participate fully in or cooperate in any investigation of a marine casualty or

incident and provide them with access to the information retrieved from the VDR (voyage data recorder) of any of their vessels involved in a casualty (Article 5).

In addition, it provides that, prior to the start of operation of a regular ro-ro ferry or high-speed passenger craft service, the host state must check that for vessels flying a flag other than that of a Member State, the administration of that flag state has accepted the company's commitment to fulfil the requirements of the Directive (Article 5).

As to surveys the Directive provides (Article 6 and 8) that each host State must carry out an initial specific survey in accordance with the provisions laid down in Annexes I and III so as to satisfy itself that the ro-ro ferry or high-speed passenger craft fulfil all the conditions to operate a safe regular service to or from one or more of its ports.

In addition, each host state must, once in every 12-month period, carry out:

- a specific survey, in accordance with Annex III of the Directive, and
- a survey during a regular service covering enough items listed in Annexes I, III and V of the Directive in order to satisfy the host state that the ferry or craft continues to fulfil all the necessary requirements for safe operation.

Specific surveys are also carried out whenever the ro-ro ferry or high-speed passenger craft undergoes major repairs, alterations and modifications, when there is a change in management or flag, or a transfer of class (Article 8, paragraph 2).

If deficiencies are established in the course of such surveys, the host State must prevent the operation of a ro-ro ferry or high-speed passenger craft on a regular service, or, in case the above ships are already operating a regular service, require the company to take the necessary measures to rectify them, following which the host state concerned verifies that the rectification has been carried out to its full satisfaction. If this is not the case, it must prevent the ferry or craft from operating. The Directive provides for a right of a company to appeal against a decision to prevent operation (Article 10).

Finally, Member States must lay down the system of penalties for infringing the national provisions adopted pursuant to the Directive and take all the measures necessary to ensure that those penalties are applied (Article 18).

3.3.2 Transposition of the Directive in Italy

Directive 1999/35/EC has been transposed in Italy by Legislative Decree no. 28/2001⁴⁴ which applies to ships since 25 May 2001. The provisions of the Decree fully mirror the provisions of the Directive.

The law has been extended to ships on domestic voyages in sea areas within Class B, C and D.

The authority in charge of carrying out the surveys required under the Legislative Decree is the Coast Guard (*Capitaneria di Porto*).

For the violation of its provisions, the Decree also provides for administrative fines from 30 million lire to 180 million lire (from around 15,000 Euros to 92,000 Euros). Criminal penalties provided for in Article 1231 of the Italian Maritime Code also apply (see paragraph 3.2.2).

There is no record of any court decision in Italy concerning the above mentioned legislation.

3.3.3 Transposition of the Directive in the Netherlands

Article 13 of the Regulation Safety Seagoing Vessels based on the Ships Decree has implemented Directive 1999/35/EC.

Article 13 of the above Regulation states that passenger ships are subject to the surveys mentioned in Articles 4, 6 and 8 of the Directive. Ships that do not hold a valid certificate are subject to the penalties provided in the Shipping Act (see paragraph 3.1.3).

There is no record of any court decision in the Netherlands concerning the above mentioned legislation.

⁴⁴ D.Lgs. 2 February 2001, no. 28, *Attuazione della direttiva 1999/35/CE relativa a un sistema di visite obbligatorie per l'esercizio in condizioni di sicurezza di traghetti roll-on/roll-off e di unità veloci da passeggeri adibiti a servizi di linea, nonché disciplina delle procedure di indagine sui sinistri marittimi*, G.U. 1 March 2001, no. 50.

3.3.4 Transposition of the Directive in Malta

Council Directive 1999/35/EC was transposed in Maltese law by the Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services Regulations of 1 April 2004.

In accordance with Regulation 3, the Regulations apply to all ro-ro ferries and high-speed passenger craft operating to or from any port in Malta on a regular service, regardless of their flag, when engaged on international voyages or on domestic voyages in sea areas covered by Class A as referred to in Article 4 of Directive 1998/18/EC. This mirrors the scope of Directive 1999/35/EC under Article 3.1. The provisions of the Regulations apply to regular ro-ro ferry and high-speed passenger craft since 1 April 2004.

The authority responsible to ensure compliance with the Regulations, and to carry out the host State survey required in respect of ro-ro ferries and high-speed passenger craft engaged on domestic voyages and international voyages is the Authority for Transport.

Regulation 4 mirrors Article 4 of Directive 1999/35/EC and imposes the same obligations envisaged by Article 4.

The same wording of Articles 5, 6, 7, 8, 9 and 10 of Directive 1999/35/EC is then used in regulations 5, 6, 7, 8, 9 and 10 of the Regulations, thus imposing on the competent authority the same obligations envisaged in articles of Directive 1999/35/EC.

Regulation 11 imposes a duty to ensure compliance and provides for penalties as follows:

1. It shall be the duty of the owner, of the company which has assumed the operation of the ship and of the master to ensure that the ship is in compliance with the provisions of these regulations and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall for each offence be liable to a fine not exceeding 1,165 Euros.
2. If a ship proceeds or attempts to proceed to sea or on any voyage or excursion in contravention of these regulations, the owner or master or the ship shall, without

prejudice to any other penalty or remedy under the Merchant Shipping Act, be liable to a fine not exceeding 233 Euros.

There is no record of any court decision in Malta concerning the application of these Regulations.

3.3.5 Transposition of the Directive in Spain

Directive 1999/35/EC has been implemented at national level in Spain by Royal Decree 1907/2000⁴⁵. In accordance with its “*Disposición final tercera*”, the Royal Decree entered into force on 1 December 2000, in line with Article 19 of the Directive.

The Spanish maritime authority entrusted with all aspects related to the enforcement of the Royal Decree is the “*Dirección General de la Marina Mercante*”.

The Royal Decree, under its “*Disposición final segunda. Habilitación normativa*” grants the “*Ministerio de Fomento*” powers to legislate with regard to matters covered by Article 3.2 of Directive 1999/35/EC. These powers have not been used to date.

Article 4.1, lett. e), of the Directive 1999/35/EC has not been implemented by the Royal Decree as per Article 4.2 of such Directive.

Article 9 of Directive 1999/35/EC is not implemented as such in a specific article of the Royal Decree but the notification duties established therein are covered in other parts of the Royal Decree.

The “*reasonable period of time*” mentioned by Article 9.2 of Directive 1999/35/EC has been fixed at 15-30 days by Article 9.5 of the Royal Decree.

The right of appeal for a company mentioned in Article 10.3 of the Directive is implemented by Article 9.3 of the Royal Decree by way of reference to the “*recurso de alzada*” and other applicable appeals regulated by Law no. 30/1992⁴⁶.

⁴⁵ *Real Decreto 1907/2000, de 24 de noviembre, por el que se aprueba el Reglamento sobre reconocimientos obligatorios para garantizar la seguridad de la navegación en determinados buques*, BOE n. 283, of 25 November 2000.

⁴⁶ *Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*, BOE no. 285, of 27 November 1992.

Article 18 of the Directive (“penalties”) is implemented by Article 9.6 of the Royal Decree. This Article applies the penalties regime established in Spain by Law 27/1992.

3.4 Directive 2003/25/EC

3.4.1 The provisions of the Directive

Directive 2003/25/EC aims at laying down a uniform level of specific stability requirements for ro-ro passenger ships, in order to improve the survivability of this type of vessel in case of collision damage and provides a high level of safety for the passengers and the crew (Article 1).

The Directive applies to all ro-ro passenger ships operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages (Article 3). It provides that each Member State, in its capacity as host State, shall ensure that ro-ro passenger ships, flying the flag of a State which is not a Member State, comply fully with the requirements of the Directive itself before they may be engaged on voyages from or to ports of that Member State in accordance with Article 4 of Directive 1999/35/EC.

The Directive sets specific stability requirements for ro-ro passenger ships and provides that all new and existing ro-ro passenger ships flying the flag of a Member State shall carry a certificate confirming compliance with the specific stability requirements established in Article 6 and Annex I of the Directive itself (Article 8).

This certificate is to be issued by the administration of the flag State and may be combined with other related certificates, and must indicate the significant wave height up to which the ship can satisfy the specific stability requirements (Article. 8, paragraph 2).

Member States acting in their capacity as host States must recognise certificates issued by another Member State in pursuance of the Directive and accept certificates

issued by a third country certifying that a ship complies with the specific stability requirements established (Article 8, paragraph 3).

Specific provisions are foreseen for ro-ro passenger ships operating seasonally or for short periods (Article 9).

Pursuant to Article 12 Member States are due to lay down effective, proportionate and dissuasive rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive and to take all the measures necessary to ensure that they are implemented.

3.4.2 Transposition of the Directive in Italy

The Directive was implemented in Italy by Legislative Decree no. 65/2005⁴⁷, and the provisions of this Decree are applicable since 27 April 2005.

The maritime authority, before a ro-ro passenger ship is engaged on scheduled international voyages, has to ascertain, at the time of initial inspection referred to in Article 5 of Legislative Decree no. 28/2001 (Directive 1999/35/EC), that that ship fully complies with the requirements of the Decree.

The authority responsible for ensuring that ships comply with the provisions of the Directive (releasing certificates and controlling that ships carry the relevant certificates) is the Coast Guard (*Capitaneria di Porto*).

In case of infringement administrative fines and criminal penalties are laid down.

In particular, an owner, operator or commander who breaches the provisions of Article 6 shall be punished with the penalty provided for in Article 1215, first paragraph, of the Italian Maritime Code (imprisonment or fine).

An owner or operator who infringes the provisions of Articles 7, paragraph 1, and 8, paragraphs 1 and 2, shall be punished with the penalty provided for in Article 1216 of Italian Maritime Code (arrest or fine).

⁴⁷ D.Lgs. 14 March 2005, no. 65, *Attuazione della direttiva 2003/25/CE relativa ai requisiti specifici di stabilità per le navi ro-ro da passeggeri*, G. U. 27 April 2005, no. 96.

There is no record of any court decision in Italy concerning the above mentioned legislation.

3.4.3 Transposition of the Directive in the Netherlands

Article 13 of the Regulation Safety Seagoing Vessels based on the Ships Decree has implemented Directive 2003/25/EC.

There is no record of any court decision in the Netherlands concerning the above mentioned legislation.

Penalties for infringement of national measures implementing Directive 2003/25/EC are laid down in the Ships Act.

In particular, if a ship does not comply with the requirements of the Directive, it can be detained, and its operations can be stopped. The captain has to moor his ship at a place designated by the relevant authority, and the ship cannot be moved afterward without the approval of the authority. Violation of this provision can lead to a substantial penalty, or imprisonment of up to 2 years. A ship can be detained until it complies with the relevant requirements.

In addition, if a ship under the Dutch flag is inspected by the NSI and found to be not meeting the requirements of the Directive, the certificates are withdrawn.

3.4.4 Transposition of the Directive in Malta

Directive 2003/25/EC was transposed into Maltese law by the Merchant Shipping (Specific Stability Requirements for Ro-Ro Passenger Ships) Rules of 12 July 2005 (hereinafter in this section referred to as the “Rules”). These Rules, comprising only five rules, are in force since 12 July 2005.

Rule 3 gives Directive 2003/25/EC the force of law. It provides as follows:

Rule 4(1) prohibits any Maltese ro-ro passenger ship from operating or attempting to operate to or from a port of a Member State on a regular service on international voyages, unless duly certified as prescribed by Directive 2003/25/EC.

By sub-rule 2, Rule 4 also prohibits any ro-ro passenger ship from operating or attempting to operate to or from a Maltese port on a regular service on international voyages, unless duly certified by the administration of its flag State, as prescribed by Directive 2003/25/EC.

Moreover by sub-rule (3) of the said Rule, the appropriate authority for the purpose of issuing certificates with regards to Maltese ships, in terms of Directive 2003/25/EC, is the Registrar-General or, an organisation or body authorised in terms of Article 367 of the relevant national rules or an official surveyor of ships appointed in terms of that Article, duly authorised by the Registrar-General who shall, subject to the provisions of these rules and such Directive, determine the conditions of issue and validity of such certificates.

With regard to penalties for any breach of the provisions of these rules, Rule 5 lays down that it is the duty of the owner, of the company which has assumed the operation of the ship and of the master to ensure that the ship is in compliance with the provisions of these rules and the applicable requirements of Directive 2003/25/EC. Such person, if in fault, shall be subject to the fines provided for in the Merchant Shipping Act. If specific fines are not provided then a fine up to a maximum of 1,165 Euros applies.

There is no record of any court decision in Malta concerning the above mentioned legislation.

3.4.5 Transposition of the Directive in Spain

Directive 2003/25/EC has been implemented at a national level in Spain by Royal Decree no. 1861/2004⁴⁸. According to its “*Disposición final tercera*”, the Royal Decree entered into force on 16 November 2004.

⁴⁸ *Real Decreto 1861/2004, de 6 de septiembre, sobre las prescripciones de estabilidad aplicables a los buques de pasaje de transbordo rodado, BOE no. 226, of 18 September 2004.*

Royal Decree no. 1861/2004 has implemented almost literally Directive 2003/25/EC.

Article 3.2 of the Directive has been implemented by Article 3.2 of the Royal Decree by identifying the “*Dirección General de la Marina Mercante*” as the Spanish maritime authority in charge of putting into force the mandate covered in this article.

Article 5 of the Directive concerning sea areas has been implemented by the Royal Decree through its “*Disposición adicional única. Zonas marítimas*” entrusting the “*Dirección General de la Marina Mercante*” to be in charge of the sea areas list requested by Article 5 of the Directive. According to paragraph 3 of the “*Disposición adicional única*”, the sea areas list will be published on the following web page: <http://www.mfom.es>.

Article 8 of the Royal Decree in relation to Article 9 of the Directive identifies the “*Dirección General de la Marina Mercante*” as the competent authority of the host State mentioned. Article 12 of the Directive has been implemented by Article 9 of the Royal Decree, which identifies the applicable penalties to be those contemplated by Law no. 27/1992 (see paragraph 3.1.5).

Both Annexes I and II of the Directive have been implemented literally by the Royal Decree.

There is no record of any court decision in Spain concerning the above mentioned legislation.

4 STAKEHOLDERS' VIEWS ON POLICY ISSUES

4.1 Introduction

This Section describes the outcome of a survey carried out among the national maritime safety authorities of four selected Member States and of other stakeholders active at national and European level (hereinafter also “the Survey”).

The Survey was based on a Questionnaire which was sent to the above mentioned stakeholders, who were required to provide written answers given the complexity of the issues addressed.

The above stakeholders have also been contacted by telephone by the national experts members of the research team, who have explained to them the aim of the questions posed, and have asked for a clarification when the content of a written reply needed to be clarified.

The Questionnaire was structured as follows:

Part I included questions concerning Directive 2009/45/EC (recast of Directive 1998/18/EC).

Part II included questions concerning Directive 1998/41/EC.

Part III included questions concerning Directive 1999/35/EC.

Part IV included questions concerning Directive 2003/25/EC.

Every Part contained four groups of questions:

The first group of questions was aimed at assessing the relevance of the respective Directive under analysis.

The second group was aimed at assessing the effectiveness of the respective Directive under analysis.

The third group was aimed at assessing the efficiency of the respective Directive under analysis.

The fourth group was aimed at assessing the utility of the respective Directive under analysis⁴⁹.

We have also tried to assess the sustainability of Directive 2009/45/EC and in this respect we have asked the maritime safety authorities and other stakeholders if they foresee the need for any reasonable and necessary changes in the rules contained in the Directive in the short, medium or long term, based on the effects that the Directive has already achieved.

4.2 Directive 2009/45/EC: Relevance, Effectiveness, Efficiency, Utility

4.2.1 Relevance

In order to assess the relevance of Directive 2009/45/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Do you think that the safety requirements imposed by the Directive address all the current safety issues? Are the safety issues addressed suitable for vessels engaged in domestic voyages? What impact does the introduction of these safety requirements have on vessels engaged on domestic voyages, particularly where they are different from international rules?*
- *Do national requirements that apply to existing passenger ships of classes C and D create any difficulties in achieving the objectives of the Directive, namely introducing a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft, when both categories of ships and craft are engaged on domestic voyages? Do you think that the fact that Article 6, par 3 let c) provides that existing passenger ships of Classes C and D shall comply with the specific relevant requirements in this Directive and in respect of matters not covered by such requirements with the rules of the Administration of the flag State hampers the achievement of the objective of the Directive to ensure a uniform level of safety on existing passenger ships? Are you aware of difficulties due to different national rules in Member States applicable to these ships? Please give examples.*
- *To what extent does the possibility left to Member States to adopt additional safety requirements or permit the use of equivalent standards or adopt exemptions (Article 9) hamper the objectives of the Directive, namely to introduce a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft? How many craft are subject to each of these variations in your Member State?*
- *Do you think that the measures adopted in this Directive and in the national provisions implementing it concerning*

⁴⁹ The meaning of the notion of relevance, effectiveness, efficiency and utility has been explained at paragraph 1.2 of Section 1.

passengers with reduced mobility really address the needs of passenger with reduced mobility? Have you completed your action plan as set out in Article 8(3) and what changes have been made as a result? What for you are the main difficulties?

- Would you introduce any amendments to the safety certificate format laid down in Annex II of the Directive? If so please elaborate.*
- To what extent are the provisions imposed by Directive 2009/45/EC applicable in your Member State to passenger ships? Are most ships in your Member states engaged on international voyages or otherwise outside the scope of the Directive?*
- How many craft are subject to each of the variations admitted by Article 9 of the Directive in your Member State, and why was it necessary to give exemptions or adopt equivalents?*

4.2.1.1 Comments from Member States' maritime safety authorities

Some authorities have expressed the view that the scope of the Directive is not appropriate, as the Directive does not cover vessels constructed in materials other than steel⁵⁰, sailing ships and to a certain extent vessels carrying offshore workers. In addition it has also been suggested that its provisions are not suitable in particular for small C and D vessels as they are based on SOLAS rules, but the size and operation areas of these vessels are very different to the typical size and voyage conditions of vessels engaged on international voyages (SOLAS vessels). Due to that, the Directives' provisions are seen as unreasonable in some cases for small vessels.

It has also been suggested that the scope of the Directive is not appropriate as it does not apply to ships engaged on intra-European routes. This circumstance entails serious economic drawbacks for small operators which, though covering short international routes, are notwithstanding subject to jurisdiction of different Member States.

Some authorities have also confirmed that the impact of the introduction of the safety requirements under Directive 2009/45/EC has been significant as the construction of new steel small passenger vessels has disappeared and nearly all small

⁵⁰ Directive 2009/45/EC is not applicable to vessels built in materials other than steel. However, nearly all of the small passenger vessels are now built in composite materials. For example, the number of passenger vessels built in steel or equivalent material, and high speed craft, is about 12% of the total number of passenger vessels operating in Spain under Spanish flag.

passenger vessels are constructed in composite materials, partly to avoid compliance with the Directive⁵¹.

Some comments were provided also with respect to the extent to which the provisions of the Directive have found application in Member States' jurisdictions and it seems that in jurisdictions such as the Spanish one the standards imposed by the Directive apply mostly to Class A vessels, while the majority of the vessels involved only in B, C or D routes are constructed in materials other than steel, and consequently, are not subject to the Directive's requirements. While in the Netherlands most of the vessels are engaged on international voyages and again Directive 2009/45/EC does not apply.

Apart from this, it is important to point out that the impact of the Directive has varied depending on the previous national requirements for a specific type of ship. For example some authorities have pointed out that if national requirements were already based on SOLAS, then the impact was not so significant, while if this was not the case the impact might be considered as big⁵².

We have also received some comments concerning the issue if the existence of national requirements that apply to existing passenger ships of classes C and D create any difficulties in introducing a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft engaged on domestic voyages. In this respect it has been asserted that in Spain this is not the case as there are not a significant number of existing steel passenger vessels, certified under the Directive for categories C and D.

As to the impact of the Directive, maritime safety authorities have expressed slightly different views. Some believe that the implementation of the Directive has not given rise to particular difficulties, and that it has of course implied that existing ships had to be modified, but the time-line provided by the Directive has allowed shipowners to plan structural interventions on their ships. Others are instead of the view that it was not reasonable to apply to existing vessels, designed and constructed before the national

⁵¹ Partly this is also due to technical advantages of composites for this type and size of vessels.

⁵² It seems that some minor requirements can have a costly impact on specific types of ships: e.g. Aldis lamp, rescue boats, radio installation, radar.

measures transposing the Directive had entered into force, retroactive common European requirements that affected all aspects of the vessel design.

Based on the comments received, not all authorities have made use of the possibility left to Member States to adopt additional safety requirements or permit the use of equivalent standards or adopt exemptions (as allowed by Article 9). For example some authorities confirm that such measures have been adopted to avoid applying different rules to similar situations, while another authority has confirmed that there are no vessels subject to these variations in its Member State.

However, they tend to appreciate the fact that the Directive leaves some margin of action to Member States. In particular it has been excluded that such a possibility hampers the objectives of the Directive, as the procedure provided for in Article 9 ensures that Member States' measures are adopted under the control of the European Commission, and it has been observed that the possibility of exemptions or equivalents for small passenger vessels or small high speed craft is useful because the strict application of the Directive could create difficulties for small vessels.

As to the provisions concerning passengers with reduced mobility some authorities have asserted that they have completed the national plan required by Article 8 of the Directive.

Some authorities have also assessed that the main difficulties in implementing such a plan are related to the necessity to adapt existing ships to the Directive and to the costs of such an operation.

The position of the one authority is particularly critical as it believes that the measures adopted in the Directive, in relation to passengers with reduced mobility are not precise since they are a breakdown of key elements and systems to be taken into account, but not specific enough regarding issues such as number, dimension and location.

Finally, no particular comments were made with respect to the format of the safety certificate pursuant to Article II of the Directive, except for the suggestion that it should include a "record of equipment" and that it would be worth exploring the possibility to align the format of the certificate with the relevant SOLAS certificates.

4.2.1.2 Comments from other stakeholders

Based on comments received by a stakeholder in Italy Directive 2009/45/EC applies to a significant number of ships, as it can be excluded that most of the ships are engaged on international voyages.

4.2.2 Effectiveness

In order to assess the effectiveness of Directive 2009/45/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Are you aware of any difficulties in recognizing Safety Certificates issued by other Member States? Are the Certificates issued in your Member State recognized by the authorities of other Member States? Do you have figures on this respect? If yes, please indicate sources, and where reports are available please provide them?*
- *In your experience, what are the difficulties for ships engaged in domestic voyages to comply with the Directive? Do you have figures? If yes please indicate sources, and where reports are available please provide them.*
- *Are controls (surveys) in your Member States organized in an efficient manner? Do you have figures? If yes please indicate sources, and where reports are available please provide them.*
- *What penalties have been adopted in your country for infringement of national provision implementing this Directive? Do you have figures? If yes please indicate sources, and where reports are available please provide them?*
- *Do you consider the above penalties introduced to be sufficiently effective, proportionate and dissuasive? If not, how could they be improved to achieve this goal?*
- *Overall, do you consider the current system of penalties to be effective?*
- *Has your Member State established a definitive list of sea areas provided at Article 4 of the Directive. Has it been published in a public database available on your Internet site? Is such list updated when necessary? Has your Member State notified to the Commission the location of the list and when modifications have been made to it? Is this information easily accessible?*
- *Is the present method of updating the Directive later in line with developments at IMO sufficient or is there another way of doing so more effectively in the future?*

4.2.2.1 Comments from Member States' maritime safety authorities

Authorities have confirmed that the Safety Certificates that they issue pursuant to Directive 2009/45/EC are recognized by the maritime safety authorities of other Member States and that they are not aware of any difficulties in recognizing Safety Certificates issued by other Member States⁵³.

Some authorities believe that it is difficult for vessels of less than 24 metres to comply with the Directive.

In general authorities assert that controls are organized in an efficient way, that penalties in their jurisdiction for infringement of the national measures implementing the Directive are effective, proportionate and dissuasive.

Authorities' opinions diverge with respect to the issue of whether the present method of updating the Directive later in line with developments at IMO is appropriate. One authority is satisfied with it, while another one believes that IMO regulations are excessive for small C or D vessels as vessels subject to IMO regulations normally have a length and tonnage much larger than the vessels involved only in C or D voyages and voyage conditions are not the same. Some of them would welcome a system of "Dynamic referral", meaning that when there is a reference to IMO regulations it should be made clear that the applicable version of the relevant IMO requirements is the version that was applicable on the date the keel of a vessel was laid and that any later revisions are applicable.

4.2.2.2 Comments from other stakeholders

The stakeholder that replied on this point asserted the present method of updating the Directive later in line with developments at IMO is appropriate.

⁵³ Please note that we have been informed that Denmark and Germany do not always accept Dutch national certificates for sailing vessels and demand SOLAS, SPS (Special Purpose Ship certificate issued pursuant to the SPS Code which is the Code of Safety of Special Purpose Ship. The last version of this Code adopted in 2008 is also available at <http://www.mdnautical.com/im820.htm>) or Directive 1998/18/EC certificates. While there are no problems with certificates issued pursuant to Directive 2009/45/EC which concern around 70 vessels.

4.2.3 Efficiency

In order to assess the efficiency of Directive 2009/45/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *What are according to you (a) for competent authorities; and (b) for companies the costs for ensuring compliance with the standards of this Directive? In your personal view are the costs of compliance economically viable? Do you have figures? If yes please indicate sources, and where reports are available please provide them.*
- *Do you think that these costs are higher than the benefits achieved? Have you recorded a decrease in the number of accidents or in the death rate since the entry into force of the original Directive? Do you have figures? If yes please indicate sources, and where reports are available please provide them.*
- *Do you think that the costs for national authorities to ensure compliance to national provisions implementing the provisions of this Directive on passengers with reduced mobility are disproportionate to the benefits they bring in term of ensuring a safe access to passenger ships for passengers with reduced mobility? Do you have figures? If yes please indicate sources, and where reports are available please provide them.*
- *Do you think that the costs for national authorities to ensure compliance with national provisions implementing the standards set by this Directive are disproportionate to the benefits they bring in term of reducing the cost of sea accidents?*
- *Do you think that the extension of the stability requirements imposed by Directive 2003/25/EC on ro-ro passenger ships engaged on international voyages to domestic ro-ro passenger ships through Directive 2003/24/EC was a necessary measure to ensure the safety of ro-ro passenger ships engaged in domestic voyages? Can you estimate what are its costs for the industry or for your Member State in terms of ensuring compliance with the provision of the Directive? Do you have figures? If yes, please indicate sources, and where reports are available please provide them. Do you think that it would be more appropriate to leave the issue of stability requirements of ro-ro passenger ships to international rules? Are the standards adopted at international level appropriate according to you?*
- *Did the requirements of the Directive result in newbuildings, rebuildings or ships being put out of service? If so, could you provide examples?*

4.2.3.1 Comments from Member States' maritime safety authorities

Authorities are not in a position to state whether the implementation of the Directive has caused a decrease in the number of accidents. For some of them such an assessment would require more time. For others there is not a significant number of accidents of passenger vessels in their jurisdiction to reach a definitive conclusion.

We received comments on the costs related to the implementation of the provisions of the Directive on passengers with reduced mobility (PRM) from the one maritime authority. According to its estimates such costs are not disproportionate on the

authority in any way, since the inspections conducted on board of passenger ships in order to check the level of compliance with the national regulations derived from the Directive have been carried out by the personnel of the authority, which never needed to be increased for this task.

According to the latter the costs affect mainly the industry, which is responsible for implementing the requirements of the regulations. It is estimated for example that in Spain to adapt a passenger ship to PRM costs between 30,000 Euros and 40,000 Euros.

According to one authority the extension of the stability requirements imposed by Directive 2003/25/EC and Directive 2003/24/EC to ro-ro passenger ships engaged in domestic voyages has had an impact on Italian flagged ships but the fact that the Directive provides that compliance with the standards had to be implemented according to a timeline has made the economic impact less serious.

Such an extension is in any case considered necessary also by other national maritime authorities, which suggest that any future possible amendments should be discussed before at IMO premises, but the EU should have the right to adopt its own legislation if any possible dangerous situation is not covered by international IMO rules.

Finally, it seems that at least in some of the Member States analyzed the requirements of the Directive did result in new-buildings, re-buildings or ships being put out of service.

4.2.3.2 Comments from other stakeholders

According to some stakeholders the entry into force of the Directive has made it necessary to adapt existing fleet and in particular high speed passenger craft to the requirements of the SDC Code (Code of Safety for Dynamically Supported Craft).

4.2.4 Utility

In order to assess the utility of Directive 2009/45/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *To what extent are the provisions imposed by Directive 2009/45/EC applicable in your Member State to passenger ships?*
- *Do you think that your Member State has enough tools to ensure the observance of all requirements?*
- *Do you think that Directive 2009/45/EC is problematic when its provisions are applied in your Member State?*
- *Does Directive 2009/45/EC cover all aspects that should be covered in light of the underlying objectives for the Directive, namely, introducing a uniform high level of safety of life and property on new and existing passenger ships?*
- *Can the Directive be enforced via the authorities or by alternative bodies? Can you see any possibilities to make the enforceability of the Directive more responsive to the needs of the industry?*
- *Do you feel it is feasible to delegate the enforcement of the Directive to the classification societies?*
- *Do you see possibilities to improve the effects of the Directive by amending the Directive?*
- *Has Directive 2009/45/EC addressed the needs and problems which had to be addressed, namely prevention of massive loss of life; ensuring a high level of safety on board; and removing any barriers to trade within the EU?*
- *If not, what do you suggest in order to address any remaining problems?*
- *Are there any issues not covered by the Directive which should have been addressed by it?*
- *Are there any issues covered by the Directive which should have not been addressed by it or that should have been addressed differently?*

4.2.4.1 Comments from Member States' maritime safety authorities

Based on the comments received, the number of passenger vessels constructed of steel or equivalent material, and high speed craft (both categories subject to the Directive) is about 12% of the total number of passenger vessels operating in Spain under the Spanish flag and in some areas the Directive is problematic, in so far as it applies to small vessels.

In this respect it was pointed out that it is necessary to re-adapt the requirements of the Directive to make them suitable for small passenger vessels (less than 24 metres), and to generate appropriate requirements for vessels constructed in materials other than steel.

In general, authorities tend to agree that they have enough tools to ensure the observance of all requirements and that the Directive's application is not problematic, except for what said above concerning small ships.

Their opinions diverge instead with respect to the issue concerning the possibility to delegate the enforcement of the Directive to the classification societies. In this respect while one authority believes that it is feasible to delegate the enforcement of the Directive to the classification societies, another one believes that classification societies are more specialized in the surveys and certification of vessels subject to international regulations.

Some slightly different opinions have been expressed by the authorities interviewed also when required to make an overall assessment of the impact of the Directive. In particular one authority has said that it is satisfied with the scope of the Directive, as it has addressed the needs and problems which had to be addressed and there are no issues covered by the Directive which should have not been addressed by it or that should have been addressed differently. On the contrary another authority has expressly pointed out that the Directive should be improved by extending its scope to international voyages between Member States and to some typologies of ships not covered by the Directive: in this respect specific separate requirements should be adopted.

Despite some concerns, also another authority believes that the Directive ensures a high level of safety on board. However, it was pointed out that it is not possible to conclude that all barriers to trade have been totally eliminated as there are not a significant number of small passenger vessels certified by the Directive, with other EU flags, operating in its jurisdiction: the majority of non-national passenger vessels operating in its Member State waters being bigger passenger vessels certified under SOLAS. As to national flag small passenger vessels, the above authority confirms that the majority of them are constructed in materials other than steel (and they comply with national rules), and they operate normally only in national waters.

Some further comments have been provided with respect to the necessity to address differently issues related to passengers with reduced mobility: in particular it seems that one authority has found that such requirements are too strict for Class D vessels.

4.2.4.2 Comments from other stakeholders

None.

4.2.5 Sustainability

As explained above, in order to assess the sustainability of Directive 2009/45/EC we have asked national maritime safety authorities and other stakeholders if they foresee the need for any reasonable and necessary changes in the rules contained in the Directive in the short medium or long term, based on the effects the Directive has already achieved.

Based on the comments received we can conclude that opinions of some national authorities on this respect diverge: one of them does not foresee such a need, while other authorities believe that it is necessary to change the rules contained in the Directive, and in particular to expand the scope of the Directive to ships made of material other than steel, and to adapt its requirements to small ships.

4.3 Directive 1998/41/EC: Relevance, Effectiveness, Efficiency, Utility

4.3.1 Relevance

In order to assess the relevance of Directive 1998/41/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Having regard to the objectives of the Directive, as set out in page 9, first paragraph, do you think that the information to be recorded under Article 5 ensure that search and rescue of passengers can be conducted effectively?*

- *Is there further information that should be recorded?*

4.3.1.1 Comments from Member States' maritime safety authorities

Maritime authorities tend to agree that the measures adopted in accordance with Directive 1998/41/EC are a necessary and helpful tool in rescue operations and that the information to be recorded under Article 5 of the Directive 1998/41/EC ensures that search and rescue of passengers can be conducted effectively. Most of them agree that no further information should be recorded.

4.3.1.2 Comments from other stakeholders

Some stakeholders have expressed the view that there is no need for further details to be recorded as the Directive already provides for collection of pertinent information, and they suggest that in reality the number of persons on board the passenger ship/high speed craft is the most important thing to record and that it would be better to minimize any other additional information required.

4.3.2 Effectiveness

In order to assess the effectiveness of Directive 1998/41/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Based on your experience has the collection of such information improved the search and rescue operations? If not, why not?*
- *Do you think that in your jurisdiction controls ensure compliance with the obligations established in the Directive?*
- *Have you recorded improvements in the search and rescue operation further to the adoption of the implementing measures of the Directive?*

4.3.2.1 Comments from Member States' maritime safety authorities

Authorities confirm that controls ensure compliance with the obligations established in the Directive.

As to the impact of the Directive on search and rescue operations further to the adoption of the measures implementing the Directive, while some maritime authorities believe that the above measures have indeed improved search and rescue operations but they are not in the position to provide figures in this respect, others have acknowledged that as in their jurisdiction there were no major operations of search and rescue in the last few years, there is not a solid basis which allows them to state whether the adoption of the Directive has improved such operations.

4.3.2.2 Comments from other stakeholders

Only one stakeholder commented on the impact of Directive 1998/41/EC, assessing that the number of operations on board is the most important factor in search and rescue operations and that additional details such as gender, year of birth, etc. are less important in search and rescue operations.

4.3.3 Efficiency

In order to assess the efficiency of Directive 1998/41/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Can you estimate the costs of putting in place a registration systems for the industry and of controlling such system for the Administration?*
- *To what extent is the cost of supervising that registration has taken place excessive?*

4.3.3.1 Comments from Member States' maritime safety authorities

Maritime safety authorities are not in the position to estimate the costs of putting in place a registration system for the industry and of controlling such systems for the Administration, but overall they do not believe that the cost of supervising that registration has taken place is excessive.

4.3.3.2 Comments from other stakeholders

One stakeholder specifically responded on this point. It observed that whilst it was not in a position to quantify the costs for the industry of putting in place a registration system, keeping a passenger registrar amounts to the salary of one person. It asserted that the cost of supervising that registration has taken place is not excessive.

4.3.4 Utility

In order to assess the utility of Directive 1998/41/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Do you think that the registration system provided by the Directive and the information to be recorded are an useful tool to improve search and rescue operations?*
- *Can you imagine other tools? Is a simple application of the IMO FAL system sufficient?*

4.3.4.1 Comments from Member States' maritime safety authorities

Opinions on the possible sufficiency of the simple application of the IMO FAL system to ensure the achievements of the objectives pursued by the provisions of Directive 1998/41/EC diverge. Some authorities suggested that the IMO FAL system, where correctly applied, could be a useful tool and would have granted the achievement

of the same objective pursued by the measures of the above Directive, others do not believe such a system would be sufficient.

4.3.4.2 Comments from other stakeholders

One stakeholder has pointed out that the most important recording for improving search and rescue operations in the aftermath of an accident is the number of persons on board, implying that it is of the view that some of the information to be recorded according to the Directive is considered not necessary.

Consistently, the same stakeholder excludes that adopting other legislation would be appropriate as it believes that such an extension would increase costs, bringing no tangible results.

4.4 Directive 1999/35/EC: Relevance, Effectiveness, Efficiency, Utility

4.4.1 Relevance

In order to assess the relevance of Directive 1999/35/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Do you think that the initial verification, specific and regular surveys required under the Directive are appropriate to ensure safe operation of regular ro-ro ferries and high-speed craft services?*
- *Do you think that the surveys required under this Directive should apply also to vessels voyaging in areas other than those covered by Class A as provided by Directive 2009/45/EC?*
- *Do you think that the fact that regular and specific surveys are to be carried out once in every 12- month period is an appropriate measure to ensure safety of the regular ro-ro ferries and high-speed craft? Can you suggest another timeline?*
- *Do you think that the cooperation mechanisms put in place by the Directive ensured that host States involved in accident investigations co-operate? Should they be more specific? Are you content with the new replacing provisions in Directive 2009/1/EC on accident investigation?*

- *Do the national provisions implementing the Directive apply also to vessels engaged in domestic voyages in sea areas covered by Class B, C, and D of Directive 2009/45/EC? Should the scope be extended to cover further classes of domestic ships than simply class A? If so, to which classes should it apply?*

4.4.1.1 Comments from Member States' maritime safety authorities

Maritime safety authorities tend to agree that the initial verification, specific and regular surveys required under the Directive as well as their timeline are appropriate to ensure the safe operation of regular ro-ro ferries and high-speed craft services, and that the cooperation mechanisms put in place were satisfactory as well as the new replacing provisions in Directive 2009/1/EC⁵⁴ on accident investigation.

In most of the jurisdictions analyzed the national provisions implementing the Directive do not apply to vessels engaged in domestic voyages in sea areas of Class B, C, D as defined in Directive 2009/45/EC⁵⁵.

Authorities have expressed different views on the issue of whether surveys required under this Directive should apply also to vessels voyaging in areas other than those covered by Class A. In this respect while some of them are in favour of such an extension, others believe it would not be appropriate.

Indeed according to one authority the extension of the Directive's provisions to vessels other than Class A would generate an additional number of inspections which in some areas would be difficult to perform. In addition, fears have been expressed that the arrangement of such inspections in vessels engaged in short voyages with very short stays in port could generate difficulties and disturbances.

⁵⁴ Commission Directive 2009/1/EC of 7 January 2009 amending, for the purposes of its adaptation to technical progress, Directive 2005/64/EC of the European Parliament and of the Council on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability, OJ L 9, 14 January 2009, pages 31–32.

⁵⁵ In the Netherlands, Malta and in Spain the national measures implementing Directive 1999/35/EC apply to vessels engaged in domestic voyages in sea areas covered by Class A. In Italy instead such measures apply also to vessels engaged in other sea areas.

4.4.1.2 Comments from other Stakeholders

As a general comment on this Directive a stakeholder has asserted that this Directive waters down the IMO efforts.

It also excludes that the surveys required under this Directive should apply also to vessels voyaging in areas other than those covered by Class A.

Overall it is satisfied with cooperation mechanisms put in place by the Directive for accident investigations.

4.4.2 Effectiveness

In order to assess the effectiveness of Directive 1999/35/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *What kind of penalties have been adopted for infringement of national provisions implementing the Directive?*
- *Compared with accident records prior to the Directive, has the implementation of these provisions led to an improvement in safety for these types of ship?*
- *Has co-operation in investigations effectively taken place? What difficulties, if any, were experienced?*
- *What information do you as host State have on foreign flagged RoPax vessels carrying out regular services to and from your ports?*

4.4.2.1 Comments from Member States' maritime safety authorities

One authority confirms that compared with accident records prior to the Directive, the implementation of the provisions of Directive 1999/35/EC led to an improvement in safety for the types of ships to which the provisions apply and that co-operation in investigations between Member States has effectively taken place.

It confirms that foreign flagged vessels carrying out regular services to and from Italian ports are subject to surveys under Directive 1999/35/EC which are carried out

with inspectors of the flag State, plus to surveys pursuant to Directive 2009/16/EC and national provisions.

Another authority confirms that monetary penalties have been adopted for infringement of the provisions of the Directive.

4.4.2.2 Comments from other Stakeholders

None.

4.4.3 Efficiency

In order to assess the efficiency of Directive 1999/35/EC, we have asked the maritime safety authorities and stakeholders the following questions:

- *Are the costs of the surveys required under Article 4 of the Directive disproportionate for host States to the effects of improving safety in the maritime transport of passengers?*

4.4.3.1 Comments from Member States' maritime safety authorities

Authorities tend to agree that the costs of the surveys required under Article 4 of the Directive have been proportionate to the effects of improving safety in the maritime transport of passengers.

4.4.3.2 Comments from other Stakeholders

It has been suggested that the cost of surveys is not excessive.

4.4.4 Utility

In order to assess the utility of Directive 1999/35/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Do you think that the mandatory surveys imposed by Directive 1999/35/EC have made ro-ro ferries and high speed passenger craft safer?*
- *What do you suggest to make the operation of ro-ro ferries and high speed passenger crafts safer?*
- *Are there any issues not covered by the Directive which should have been addressed by it?*
- *Are there any issues covered by the Directive which should have not been addressed by it or that should have been addressed differently?*

4.4.4.1 Comments from Member States' maritime safety authorities

Authorities tend to agree that the mandatory surveys imposed by Directive 1999/35/EC have made ro-ro ferries and high speed passenger craft safer, and overall there are no further issues that the Directive should have covered and that there are no issues which should have not been addressed by it or that should have been addressed differently.

However, according to the maritime safety authorities interviewed some improvements could be useful in order make the operation of such vessels safer. In particular, it has been suggested that the regime of the Directive should be harmonized with the Port State Control regime (Directive 2009/16/EC⁵⁶), especially in terms of scope of the inspections, which today is not the same and that compliance with MARPOL⁵⁷, and with ILO⁵⁸ conventions and other relevant instruments should be

⁵⁶ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control, OJ L 131, 28 May 2009, pages 57–100.

⁵⁷ MARPOL 73/78 is the International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978.

⁵⁸ The ILO is the international organization responsible for drawing up and overseeing international labour standards. It is the only 'tripartite' United Nations agency that brings together representatives of governments, employers and workers to jointly shape policies and programmes promoting Decent Work for all.

included in the scope of the surveys under this Directive, in line with the Port State Control Directive. It has also been suggested to introduce surprise inspections surveys.

4.4.4.2 Comments from other Stakeholders

No specific comments were provided by stakeholders on the utility of Directive 1999/35/EC. However it has been argued as a general comment that the adoption of new legislation should be avoided.

4.5 Directive 2003/25/EC: Relevance, Effectiveness, Efficiency, Utility

4.5.1 Relevance

In order to assess the relevance of Directive 2003/25/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Have the standards provided in Annex 1 of the Directive been adopted in your jurisdiction?*
- *In your view, have they improved the survivability of ro-ro passenger ships in case of collision damage?*
- *Do you have figures concerning loss of life as consequence of accidents occurring before and after the entry into force of the Directive and its implementation in your Member State?*
- *Are the standards updated regularly? Are they still appropriate taking into consideration technological improvement?*

4.5.1.1 Comments from Member States' maritime safety authorities

Standards provided in Annex 1 of the Directive have in general been adopted in the jurisdictions that we have analysed, whose authorities tend to agree that the adoption of such standards has improved the survivability of ro-ro passenger ships in case of collision damage.

According to the Dutch Authority the standards laid down by the Directive are still appropriate taking into consideration technological improvement.

4.5.1.2 Comments from other Stakeholders

The only stakeholder that replied expressed a critical view on this Directive, asserting in general terms that it is imposing an additional layer on top of SOLAS. It commented that although it is possibly always arguable that the standards introduced have improved survivability of ro-ro passenger ships in the case of collision damage, IMO should be the place where standards have to be adopted.

4.5.2 Effectiveness

In order to assess the effectiveness of Directive 2003/25/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *To what extent do you (Authorities in your jurisdiction) undertake controls in your jurisdiction to ensure that vessels concerned comply with the standards provided in the Directive? Can you estimate the percentage of infractions?*
- *Are penalties appropriate? What kind of penalties are provided?*
- *Do you have statistics or estimates of the number of ships with an operational specific stability certificate issued by another Member State accepted within your jurisdiction as a host State?*
- *Are your certificates accepted by other Member States acting as host States?*
- *How do you apply the Stockholm Agreement provisions in combination with SOLAS 2009 to ships built after 1 January 2009?*

4.5.2.1 Comments from Member States' maritime safety authorities

One authority confirmed that controls to ensure that vessels concerned comply with the standards provided in the Directive are carried out at the renewal of safety

certificates and on a case by case basis within the context of inspection activities of maritime authorities. Such surveys are surprise inspection surveys.

In Spain controls are carried out in combination with the other surveys (SOLAS or Directive 2009/45/EC certificate renewal).

In the Netherlands controls that the vessels comply with the Directive are delegated to the Classification Societies (Ro's). It was asserted that ships meet the relevant requirements and that no infractions are committed.

Based on the comments received it seems that certificates issued by a Member State under Directive 2003/25/EC are accepted by other Member States acting as host States. In this respect we have been informed that there are about 19 vessels having another Member State's flag, and about 8 having a non-EU flag whose certificate is accepted in Spanish jurisdiction.

As to penalties, authorities assert that those applied in their jurisdiction are appropriate. In Italy they are of an administrative and criminal nature; in Malta they are fines of up to 1,165 Euros; in Spain penalties are basically fines, although additional measures may be taken.

One authority informed us that for ships built after 1 January 2009 it applies both the Stockholm Agreement provisions in combination with SOLAS 2009. Another authority has informed us that it applies the Stockholm Agreement in combination with SOLAS 2009 to ships built after January 2009 by calculation.

4.5.2.2 Comments from other Stakeholders

None.

4.5.3 Efficiency

In order to assess the efficiency of Directive 2003/25/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Are the standards imposed by the Directive necessary taking into consideration the characteristics of the sea area relevant for your jurisdiction, and the fact that the Directive applies the Stockholm Agreement standards to non Northern Sea Areas?*
- *Do you have estimates of the cost of applying such standards to ro-ro passenger ships engaged in domestic and international voyages?*
- *Can you estimate how many lives might have been saved further to the adoption of the Directive?*

4.5.3.1 Comments from Member States' maritime safety authorities

Authorities tend to agree that the standards imposed by the Directive are necessary also for ro-ro ships engaged in sea areas under their jurisdiction, except for the one authority which asserts that such standards are excessive as it finds it disproportionate to transpose one set of rules applicable in one area to another area.

The above authorities were not in a position to provide figures concerning the costs related to the implementation of the Directive. In this respect the Spanish authority has argued that the cost of adapting a vessel to the Directive can be assessed only on a case by case basis, as in some cases it is possible and economically suitable to reduce the draught only (no physical modification is required), and in other cases it is necessary to put the ship out of service.

4.5.3.2 Comments from other Stakeholders

None.

4.5.4 Utility

In order to assess the utility of Directive 2003/25/EC we have asked the maritime safety authorities and stakeholders the following questions:

- *Would you say that the SOLAS standards were sufficient to ensure international and domestic voyages?*
- *Do you think that applying the standards provided in the Stockholm agreement EU wide was excessive, do they ensure the survivability of ro-ro passenger ships in case of collision?*

4.5.4.1 Comments from Member States' maritime safety authorities

Overall the authorities interviewed did not express a strong position on the possible appropriateness of SOLAS rules to ensure the safety of ships engaged on international voyages, and some of them agree that the application of the standards laid down in the Stockholm Agreement have enhanced the level of safety of ro-ro passenger ships and that they are not excessive.

4.5.4.2 Comments from other Stakeholders

None.

4.6 Other comments provided by stakeholders while answering Questionnaire no. 2, or submitting a position paper

Some stakeholders have provided interesting input concerning the relevance of Directive 2009/45/EC when interviewed in connection with Part II of the Study.

In particular, it was stressed that the definition of “port areas” provided in the Directive is not appropriate. Indeed, Directive 2009/45/EC excludes from its scope (Article 3) ships and craft exclusively engaged in port areas, but provides a definition of port areas which seems to leave to Member States too wide a discretion in identifying such areas⁵⁹.

⁵⁹ Pursuant to Article 2 lett. r) of the Directive “port area”: “means 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”.

Some stakeholders have pointed out that the scope of the Directive should be extended so as to cover small ships and ships built in other material than steel and historic ships. With respect to ships built in other material than steel it was pointed out that specific rules should be adopted.

We have also asked them to express their views on the possible adoption of EU legislation with respect to vessels transporting offshore workers, tenders for large passenger ships and to European registered cruises engaged in polar areas, but stakeholders identified applicable IMO SOLAS rules, and did not suggest that it would be appropriate to adopt specific European legislation in this respect.

In line with this position, other stakeholders have firmly expressed the view that the scope of the Directive 2009/45/EC should not be extended, and in particular should not cover ships engaged on international voyages, including intra-EU ones, as rules for ships engaged on the above voyages should be adopted by IMO, so that the entire world fleet can benefit from any enhancements that are subsequently agreed upon.

As to the effectiveness of Directive 2009/45/EC, some Italian stakeholders also pointed out that in Italy surveys pursuant to Article 12 of the Directive are carried out pursuant to procedures laid down in regulations adopted before Directive 2009/45/EC entered into force, which are slow and not appropriate.

Some other comments were relevant for appraising the efficiency of Directive 2009/45/EC: for example it has been stressed that the obligations to keep an Official responsible for radio communications pursuant to SOLAS Chapter IV, to which Article 6 , par. 1 lett. b) refers are excessive for small ships engaged on short trips, and it was suggested that such an obligation should be limited to ships engaged on voyages of a minimum duration and to ships travelling a certain amount of miles off the coast.

Another issue was raised by an Italian stakeholder in connection with the definition of high speed passenger craft.

Article 2 lett. g) of the Directive states that ‘high-speed passenger craft’ means a high-speed craft as defined in Regulation X/1 of the 1974 SOLAS Convention, as

According to one stakeholder pursuant to such definition also the Naples Gulf could be considered a port area. In this respect it is suggested that it is necessary to ensure consistency in the definition of port areas among the Member states.

amended, which carries more than 12 passengers, with the exception of passenger ships engaged on domestic voyages in sea areas of Class B, C or D when:

- (a) their displacement corresponding to the design waterline is less than 500 m³; and
- (b) their maximum speed, as defined in Regulation 1.4.30 of the 1994 High Speed Craft Code and Regulation 1.4.37 of the 2000 High Speed Craft Code, is less than 20 knots.

The stakeholder assesses that this provision is applied in Italy in a non consistent way, as craft not complying with the Directive are allowed to have a speed higher than 20 knots when they carry less passengers or weight than they are certified to carry (i.e. in particular operational conditions).

An Italian stakeholder has also commented on Directive 1999/35/EC and asserted that it is excessive to carry out a survey prior to the start of operation of a ro-ro ferry or high speed passenger craft on a regular service on every single route, and that the survey should be carried out prior to the start of one operation of the above vessels in a geographic area of a Member State.

A stakeholder has also commented on the impact of European legislation and in particular of applying the Stockholm Agreement to ro-ro passenger ships engaged on international and domestic voyages, stating that the cost of adapting its fleet was high and in some cases that it has been necessary to put some vessels out of service as to adapt them to the above standards would have been too expensive.

5 SUMMARY OF FACTUAL CONCLUSIONS

5.1 Introduction

As a general comment on the Survey carried out we can state that all authorities interviewed seem satisfied with the provisions of Directives 2009/45/EC, 1998/41/EC, 1999/35/EC and 2003/25/EC, however some of them believe that the legislative framework should be improved with respect to specific issues.

Stakeholders have expressed instead some more specific concerns with respect to issues that the Directives should have addressed better, but overall it can be stated already at this stage that such comments are aimed at proposing amendments capable of improving the effects of the Directives under assessment, but are based on the assumption that such pieces of legislation have introduced useful tools for enhancing the safety on board passenger ships.

The Contractor, as a general comment, in turn notes that there is a lack of a publicly available record at national level of the number of infractions of national measures implementing each of the Directives under assessment and of the concrete amount of the penalties imposed, and that this circumstance affects the possibility to assess the reliability of some of the comments provided by the maritime safety authorities with respect to the effectiveness of the Directives.

That said, this Section will be structured as follows:

- The first paragraphs will assess the relevance, effectiveness, efficiency, utility of Directives 2009/45/EC, 1998/41/EC, 1999/35/EC, 2003/25/EC, based on the comments received and also on the results of our desk research activity. Such an assessment will be carried out taking into consideration comments provided by authorities and stakeholders on which there is a certain degree of *consensus* and/or for which details have been provided, and in respect to which it is also possible to identify alternative ways of addressing the issues raised.
- The last paragraph will draw conclusions based on the findings of the *ex-post* assessment.

5.2 Relevance, effectiveness, efficiency and utility of Directive 2009/45/EC

The observations collected by Member States' maritime safety authorities and stakeholders and our research activity have revealed that implementation of Directive 2009/45/EC can be considered as successful.

In this respect it is posited in agreement that:

- Overall, the aim pursued by the Directive of introducing a high uniform level of safety of persons and property on new and existing passenger ships can be considered as achieved.
- Implementation of the Directive has also allowed the recognition of safety certificates issued by one Member State in other Member States.
- The provisions of the Directive have been transposed in all Member States analysed. Some definitions could be clarified in order to avoid that unlawful practices are tolerated at national level.
- Penalties applied for infringement of national provisions transposing the measures of the Directive are in general considered as appropriate, although the Contractor notices that the economic relevance of fines in some of the Member States analysed is very low, and wonders whether this could affect the effectiveness of the Directive (see Section 3 above).

That said, there is a significant degree of agreement that currently the scope of Directive 2009/45/EC is not appropriate and should be extended to ships made of material other than steel, and historic ships. Substantial argument has also been provided to that the scope of the Directive is not appropriate as it does not cover sailing ships.

In addition, the provisions of the Directive are seen as not appropriate in respect of small ships.

In this respect, the Contractor remarks that in the absence of a definition of small ships at European level, for small ships one should intend at least ships carrying less than 12 passengers, existing ships having a length of less than 24 metres, which are not covered by Directive 2009/45/EC, and new carrying more than 12 passengers but below

24 metres, which are indeed covered by the Directive, but for which it is suggested that more specific standards should be adopted.

Although it was not explicitly stated that the EU should intervene with specific respect to ships carrying less than 12 passengers the Contractor believes that the need for specific rules for small ships implies a twofold approach to small ships. On one hand it is necessary to define and adopt specific rules for new ships carrying less than 12 passengers, and existing ships having a length of less than 24 metres. On the other hand, the same rules could apply also to new ships carrying more than 12 passengers but having a length of less than 24 metres.

Connected to this critique, are the comments on the suitability of the present method of updating the Directive in line with developments at IMO: it is argued that IMO regulations are disproportionate for small vessels, meaning vessels below 24 metres.

Furthermore, the fact that the Directive does not cover ships engaged on intra-European routes is perceived as an obstacle to the free provision of transport services and the free movement of passengers in the internal market in particular for those vessels that are not covered by the provisions of the IMO SOLAS Convention when engaged on international voyages.

It was also suggested that some definitions provided in Directive 2009/45/EC could be improved in order to avoid that illegitimate practices are tolerated at national level by maritime authorities: the reference is to the definition of port areas and of high speed passenger craft (Article 2 of Directive 2009/45/EC).

In addition, it seems that, in the absence of EU guidelines on the surveys to be carried out pursuant to Article 12 of Directive 2009/45/EC, the way they are carried out in some Member States is not efficient and represents a burden for the industry. The Contractor would suggest that it might be due to the fact that Article 12 refers to IMO “Survey guidelines under the harmonized system of survey and certification, 2007”, but the latter do not really give an indication concerning the timeframe by which surveys should be completed or the way to coordinate the different authorities that might be involved in the procedure.

Finally, we observe that one maritime safety authority calls for specific requirements for passengers with reduced mobility. It expresses concern that the

Directive requires Member States to ensure that appropriate measures are taken to enable persons with reduced mobility to have safe access to passenger ships and to high-speed passenger craft, without specifying what the measures are.

The Contractor observes that it would be important to consider the extent to which specifying such requirements would be consistent with the principle of subsidiarity⁶⁰. It also notes that the existence of different requirements for passengers with reduced mobility is not in general used by port States for example as a ground to refuse a ship registered in another State, therefore the possibility given by the EU legislator to Member States to specify the requirements for passengers with reduced mobility is not likely to give rise to obstacles to the free circulation of vessels within the EU.

In the light of above the Contractor would suggest that Member States have been correctly considered by the EU legislator as better suited than the latter to adopt specific measures ensuring passengers with reduced mobility access to passenger ships, and that the alleged lack of specificity of Directive 2009/45/EC in this respect does not take in due account the role of the EU legislation in the EU legal order.

5.3 Relevance, effectiveness, efficiency and utility of Directive 1998/41/EC

Based on comments received and research activity carried out:

- The provisions of Directive 1998/41/EC addressed the issues related to search and rescue operations in an appropriate way, and no significant problems have been adverted in the implementation and enforcement of the Directive.
- It seems that this legislation has had a positive effect.
- The impact of the provisions of the Directive has been positive overall, and the costs of complying with the requirements of the Directive have not been high or excessive neither for the industry nor for the Member States' public authorities.

⁶⁰ Pursuant to the Treaty on the European Union (TEU) (Article 5, ex Article 5 Treaty establishing the European Community, or "TEC") the EU should act in compliance with the principle of subsidiarity, this implying that it should adopt specific legislative measures in so far as the objectives pursued through the adoption of such measures cannot be achieved by Member States acting individually.

- Neither authorities nor stakeholders were in a position to suggest amendments to the Directive that would allow issues not addressed by the latter to be addressed.

5.4 Relevance, effectiveness, efficiency and utility of Directive 1999/35/EC

Based on the comments received and research activity carried out:

- Directive 1999/35/EC contributed to improving the security of conditions on board ro-ro ferries and high speed passenger craft on a regular service, as fewer accidents have been recorded than before the implementation of the Directive.
- In addition, from a practical point of view, implementation has not caused problems. It is noteworthy to mention also that some Member States have adopted specific penalties for infringement of national provisions implementing the Directive.
- The costs required for testing have not appeared disproportionate.

That said, some improvements were suggested in order to make the operation of ro-ro ferries and high speed passenger crafts safer. In this respect was also proposed to introduce surprise inspections surveys and to reduce the number of standards surveys.

5.5 Relevance, effectiveness, efficiency and utility of Directive 2003/25/EC

Based on the comments received and on the research activity carried out:

- It seems that the provisions of Directive 2003/25/EC addressed the issues related to the safety of ro-ro passenger ships. Neither authorities nor stakeholders were in a position to suggest amendments to the Directive that would allow issues not addressed by the latter to be addressed.

- Some Member States have adopted specific penalties, in some cases also of a criminal nature, for infringement of national measures implementing the Directive. Penalties are considered as appropriate, however the Contractor notices (see Section 3) that the economic relevance of fines in some of the Member States analysed is very low, and wonders whether this could affect the effectiveness of the Directive.
- Unlike other Directives, the adjustments made necessary to comply with Directive 2003/25/EC, though they occurred gradually due to the reasonable period of time allowed for adaptation, had a significant impact on the national fleet. However, such costs have overall not been found excessive.

5.6 Conclusions

The overview provided in the previous paragraphs allows us to conclude that the measures introduced by the Directives under assessment, namely Directives 2009/45/EC, 1998/41/EC, 1999/35/EC and 2003/25/EC have:

- been partially appropriate in consideration of the problems that each Directive is intended to solve;
- attained the objectives for which each Directive was introduced, allowing the achievement of the expected effects at a reasonable cost, with some reservations concerning Directive 2009/45/EC, and more in general concerning the appropriateness of the penalties applied for infringement of national provisions implementing the Directive in some Member States;
- addressed the needs that needed to be addressed when each of the Directives was adopted.

In particular, Directives 1998/41/EC, 1999/35/EC and 2003/25/EC have been relevant, effective, efficient and useful, although some improvement could be suggested to enhance the efficiency of Directive 1999/35/EC.

The scope of Directive 2009/45/EC is instead not fully appropriate, as it does not include many of the passenger ships engaged on domestic and intra-European voyages in the EU.

On the other hand, it can be argued that the provisions of the Directive 2009/45/EC are in some way excessive for some small ships, meaning ships below 24 metres independently from the number of passengers carried. In this respect it is argued that specific standards should be adopted for such vessels.

Moreover, as explained in the previous paragraphs some definitions provided in Directive 2009/45/EC appear to need clarification, and some guidance appear necessary with respect to surveys required by its Article 12.

In addition, the Contractor remarks that while a general satisfaction has been expressed by maritime safety authorities as to the effectiveness of the Directives, and in particular of the penalties applied at national level for infringements of national measures implementing the Directives, it was not possible to verify such statements due to the lack of data available on the results of controls carried out by national authorities on ships to which the above rules apply.

6 RECOMMENDATIONS

6.1 Overview

Despite that the current legislative framework on the safety of passenger ships has given positive results and seems to have addressed most of the safety issues that affect passenger ships, and to a certain extent constituted an obstacle to the realization of an integrated market for passenger transport services, some amendments are perceived as necessary to achieve a high level of safety of passenger ships operating in a fully integrated internal market.

Such amendments mainly concern Directive 2009/45/EC, whose scope needs to be extended to adapt it to technological improvements and markets trends, and in particular the tendency to build new ships in composite material.

However, they also concern issues that are not new but that were not addressed in the most efficient way when Directive 1998/18/EC was originally adopted: the reference is to the necessity to adopt well targeted standards for small ships, and to adopt a comprehensive solution to address the needs of the niche market for transport of passengers by historic ships and by sailing ships.

Some amendments could be useful also to improve the efficiency of the regime laid down by Directive 1999/35/EC: in particular, it would be beneficial to harmonize the system of surveys put in place by this Directive with the one put in place by Directive 2009/16/EC on port State control.

Apart from the comments above, there is also some margin to improve the current legislative framework without amending it but simply providing some guidance.

This Section will therefore focus on three possible options for improving the current legislative framework, trying to assess whether there are issues that could be addressed by simply improving the enforcement of such framework, or in any case without amending it.

Secondly, it will identify which issues should be addressed by amending the current legislative framework.

6.2 Measures to improve the enforcement of the legislative framework

As no particular concerns were expressed with regard to the enforcement of Directives 2009/45/EC, 1998/41/EC, 1999/35/EC, 2003/25/EC, it seems that no measures are necessary to improve the enforcement of the legislative framework, save for what will be suggested below with respect to measures that would ensure the traceability of infringements found at national level and of the penalties imposed.

6.3 Other improvements that can be made without amending the legislative framework

Based on the findings of our Survey it could be useful to clarify some of the definitions provided by Directive 2009/45/EC:

In particular it is suggested to provide Guidelines on:

- The meaning of port areas.
- The definition of high speed passenger craft: in this respect it could be useful to specify that craft that exceeds the 20 knot speed limit are subject to the Directive.
- The criteria according to which the surveys required by Article 12 of the Directive have to be carried out: in this respect for example it would be useful to establish timeframes within which surveys have to be completed, or to require coordination among the authorities responsible for carrying out the surveys.

6.4 Changes to the legislative framework

As announced some amendments to the current legislative framework on the safety of passenger ships are necessary. Whilst most of stakeholders consulted, considered that amendments should be discussed before the IMO, it seems that the EU should urgently address the following issues.

As to Directive 2009/45/EC:

- to provide a definition of small ships, to amend the Directive with the aim of re-adapting its requirements in order to make them suitable for small passenger vessels (meaning new ships of less than 24 metres carrying more than 12 passengers, new ships carrying less than 12 passengers, and existing ships of less than 24 metres);
- to define appropriate requirements for vessels constructed in materials other than steel;
- to adopt to adopt legislation on historic ships and sailing ships;
- to consider to expanding the scope of Directive 2009/45/EC to intra-European voyages, in particular for those ships that are not covered by IMO SOLAS rules.

As to Directive 1999/35/EC:

- It is suggested that in order to make the Directive more efficient, provisions should be included to harmonize the system of surveys required under Directive 1999/35/EC with the system required under Directive 2009/16/EC, possibly requiring national authorities to carry out a certain amount of surprise inspections.

Finally, the Contractor believes that in order to verify the level of enforcement at national level of all the Directives under assessment it could be beneficial to require Member States to submit biennial report on the number of infringements found by the competent authorities and the penalties imposed.

This could also make it easier to assess the effectiveness of the penalties applied in different Member States and could be useful in order to identify best practices within the EU.

PART II

7 RESEARCH METHODOLOGY

7.1 Introduction

This Section provides a summary of the research methodology used with respect to Part II of the Study. It describes:

- the overall approach used;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the Study, and how they have provided input.

7.2 Overview of the approach

The Commission asked us to set out and address a number of questions, most of which can be categorised as either relating to:

- the existence of safety issues not addressed by the current EU rules which might concern passenger ship transport and may require the attention of the EU legislator;
- the existence of major current safety-related barriers in the transfer of passenger ships between Member States; and
- the appropriateness of covering safety gaps thus identified through EU legislation.

In order to address these questions, we developed a research methodology divided into two parts:

- desk research; and
- interviews and analysis.

The rationale for this division is that in order to identify safety gaps not addressed by European legislation and to assess the appropriateness of legislative initiatives at European level it is necessary to analyze the relevant doctrine on this point and to take into consideration the points of view of stakeholders, both from the private and the public sector.

Such activities have been carried out in four selected Member States: Italy, the Netherlands, Malta and Spain and at European level.

The choice of the above States also for Part II of the Study is based on the following:

- the Invitation to tender sent by the European Commission required us to carry out a series of interviews in their national language with the maritime safety competent authorities of four selected Member States: two large, two small. Therefore to ensure coherence between the two Parts of this Study we decided to address all issues under analysis in Part II to the same authorities and stakeholders consulted in connection with Part I;
- The importance of passenger ship transport in each of the Member States selected. In this respect Italy is the country with the highest number of passenger ships that are live and on order books. On the other hand Malta and the Netherlands are representative of EU small States and have the highest number of ships that are live and on order books among EU small Member States⁶¹;
- The geographic location: Spain' coasts are surrounded by the Mediterranean Sea and the Atlantic Ocean, which implies that the country has jurisdiction on cross border waters presenting varying sea conditions.

⁶¹ EMSA figures.

7.3 Desk research

The following information has been collected and analysed through desk research:

- information about the legal framework applicable to ships not covered by EU legislation; and
- data about existing case law involving the situation of such ships.

In the context of desk research activities we have also reviewed international legislation applicable to such ships and assessed the scope of EU legislative competence in the maritime sector.

7.4 Stakeholders' inputs

Relatively little information is publicly available relating to the issues we have been asked to address and therefore we have relied extensively on information and opinions provided by stakeholders on a voluntary basis. This Section summarizes the stakeholders which have contributed to the Study, and how they have contributed. This is divided as follows:

- National maritime authorities; and
- Shipowners, other operators and representative associations.

We would like to thank all of the stakeholders that contributed to the Study.

National Maritime Authorities

We contacted the national maritime authorities in four selected Member States, namely Italy, the Netherlands, Malta and Spain, in order to obtain information and their views in connection with the existence of safety gaps and related obstacles to the good functioning of the internal market.

The above authorities were also asked to give their opinion on the utility of legislative initiatives of the EU aimed at addressing such issues. In the four Member States selected as case studies we provided the national maritime authorities with one questionnaire which was followed up with a telephone interview where necessary.

Given the complexity of the questions answered, one of the authority which replied did it in writing.

TABLE 4 STAKEHOLDER INTERVIEWS: NATIONAL MARITIME AUTHORITIES

<i>Member State</i>	<i>Organization</i>	<i>Form of Input to Study</i>
Italy	<i>Direzione Generale delle Capitanerie di Porto</i>	No reply
	Ministry of Infrastructure and Transport	No reply
	Autorità Portuali (Port Authorities) (authority of Savona, Trieste, Ancona, Naples, La Spezia, Salerno, Livorno, Brindisi, Messina, Palermo, Venice, Ravenna, Catania, Taranto)	No reply
The Netherlands	Ministry of Transport	Written submission
Malta	Merchant Shipping Directorate	Interview
Spain	<i>Dirección General de la Marina Mercante (DGMM)</i>	No reply
	Sasemar (Maritime Security Agency)	No reply

Other stakeholders

We consulted with maritime stakeholders, namely shipowners, ferry operators, ship builders and industry associations in order to obtain information and their views in connection with the existence of safety gaps and related obstacles to the good functioning of the internal market.

We sought to include:

- The top operators in each of the four Member States selected; and
- The main industry associations in most of the selected Member States.

Table 5 lists the stakeholders we have approached; it also lists the business sector in which they are active. Stakeholders were given the opportunity to respond even if only in part, but some decided not to respond.

TABLE 5 STAKEHOLDER INTERVIEWS: NATIONAL OPERATORS AND INDUSTRY ASSOCIATIONS

<i>Stakeholder</i>	<i>Business sector</i>	<i>Bases in case Study</i>	<i>Type of participation</i>
Associazione Italiana di Diritto marittimo	Association of Maritime Law	Italy	No reply
Assonave, Associazione dell'Industria Navalmecanica	National Association of Italian Shipbuilders and Shiprepairers	Italy	Written submission
Confitarma (Confederazione Italiana Armatori)	Shipping company and shipowners' trade association	Italy	Written submission
Associazione Cabotaggio Armatori Partenopei	Association of Neapolitan coastal shipowners	Italy	Written submission

AN.CA.NA.P Associazione Nazionale Cantieri Navali Privati	National association of private shipyard	Italy	Written Submission
Moby S.p.A.	Ferry Company	Italy	Written submission
KVNR	Royal Association of Netherland's Shipowners	The Netherland	No reply
DFDS Seaways BV	Passenger mini- ferries and Ro-Ro freight shipping	The Netherland	No reply
Stena Line BV	Swedish Ferry Company for passenger and freight	The Netherland	No reply
Wagenborg Passagiersdiensten BV	Danish Ferry Company	The Netherland	No reply
Rederij Doeksen	Dutch Ferry Company	The Netherland	No reply
Virtu Ferries Limited	Maltese Operators of High Speed craft and passenger ferries	Malta	No reply
Gozo Channel Company Limited	Maltese Ferry Company	Malta	No reply
Anave (Shipowners' association)	Spanish Shipowners' association	Spain	Written submission
Balearia	Spanish Ferry Company	Spain	No reply

Fred Olsen	Spanish Ferry Company	Spain	Written submission
Euro Ferrys	Spanish Ferry Company	Spain	No reply
FRS	Spanish Ferry Company	Spain	Written submission
Naviera Armas	Shipping Company	Spain	No reply
Pullmantur	Spanish Tour operator	Spain	No reply
Trasmediterranea	Spanish Ferry Company	Spain	Written submission

We have also included the stakeholders active at European level listed in Table 6 below. They were provided with a questionnaire and were given a deadline to reply. They were given the opportunity to respond even if only in part, but some decided not to respond.

TABLE 6 STAKEHOLDER INTERVIEWS: STAKEHOLDERS ACTIVE AT EUROPEAN LEVEL

<i>Organization</i>	<i>Full name</i>	<i>Represents</i>	<i>Type of participation</i>
CESA	Community of European Shipyards Associations	Representative organisation of associations of shipbuilding industry	No reply
ECC	European Cruise Council	Associations representing the leading European cruise	Written submission

		companies	
ECSA	European Community Shipowners' Associations	Committee representing European Shipowners' Associations	No reply
EWEA	European Wind Energy Association	Associations representing wind industry	No reply
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Unions	Federation of Chemical, Energy, Mine and General Workers' Unions	Phone Interview (22 February 2011)

/

8 SAFETY GAPS AND RELATED OBSTACLES TO THE INTERNAL MARKET

8.1 Introduction

This Section is aimed at identifying possible existing safety gaps and obstacles to the internal market not addressed by EU legislation on the safety of passenger ships and by rules liberalising the maritime transport sector.

We have discussed in Part I of this Study the scope and the impact of existing legislation on the safety of passenger ships.

As to general legislation addressing internal market issues in the maritime transport sector it is useful to recall that:

- Regulation 789/2004/EC introduces measures that facilitate the transfer of cargo and passenger ships within the European Union in order to reduce costs and administrative procedures, reconciling considerations relating to the internal market such as the elimination of technical barriers to the transfer of ships between the registers of the Member States, and requirements relating to maritime safety (a high level of ship safety and environmental protection).
- Regulation 4055/86/EEC gives Member State nationals (and non-Community shipping companies using ships registered in a Member State and controlled by Member State nationals) the right to carry passengers or goods by sea between any port of a Member State and any port or offshore installation of another Member State or of a non-Community (now EU) Country, requiring that any current national restrictions which reserve the carriage of goods to vessels flying the national flag are to be phased out.
- Regulation 3577/92/EEC grants freedom to provide maritime transport services within a Member State (maritime cabotage) for Community shipowners operating ships registered in a Member State and flying the flag of that Member State, subject to these ships complying with all the conditions for carrying out cabotage within that Member State.

The following part of this Section will consider issues that could possibly be identified as safety gaps in the existing EU legislation on the safety of passenger ships.

We believe that it is possible to identify two typologies of safety gaps, namely:

1. Safety gaps due to an explicit or implicit exclusion from the scope of Directive 2009/45/EC of a specific category of ships and to a lack or to the inappropriateness of international binding provisions (Category n. 1);
2. Safety gaps due to a lack of specific rules addressing ships that operate in areas where the sea conditions are peculiar and therefore where specific rules on the safety of ships operating in those areas should be in force; or gaps due to the absence of specific rules that take into account the service for which the vessel is intended (Category n. 2).

On this basis we have analyzed the legal framework applying to small, historic and sailing ships and to ships made of material other than steel (Category n. 1); tenders for large passenger ships and ships transporting offshore workers, European registered cruise ships operating in polar areas (Category n.2).

Finally, we have thought through issues that might constitute an obstacle to the internal market: namely those related to the fact that passenger ships engaged on intra-European routes are considered to be engaged on international voyages and are not subject to Directive 2009/45/EC.

8.2 *Small ships and sailing ships*

Pursuant to Directive 2009/45/EC passenger ships are those ships that carry more than 12 passengers. For ships the keel of which was laid or was at a similar stage of construction before 1 July 1998 (existing ships) the Directive applies only if they are of 24 metres in length or above.

In the light of above and in the absence of a clear definition, it is possible to state that small ships are those which carry less than 12 passengers, or existing ships which are of less than 24 meters in length to which Directive 2009/45/EC does not apply.

In addition, based on the comments received by stakeholders and maritime authorities, it could be argued that small ships are also new ships having a length of below 24 meters but carrying more than 12 passengers, to which the Directive applies, setting requirements that are considered excessive.

Small ships carrying more than 12 passengers are subject to IMO SOLAS rules when engaged on international voyages, and (if new) to Directive 2009/45/EC when engaged on domestic voyages.

However, small ships carrying less than 12 passengers, or existing small ships carrying more than 12 passengers but having a length of below 24 metres are subject to the relevant national legislation when they are engaged on domestic voyages.

For example in Italy the relevant legislation for small ships is contained in Law no. 616/62⁶² and in the D.P.R. no. 435/1991⁶³.

These rules, in turn, refer to IMO SOLAS requirements for ships engaged in unrestricted national navigation (or at any distance from the coast), while, for vessels engaged in narrower areas they set out specific requirements or refer to regulations set by Technical Organizations (so-called "approved body") in relation to the type of material used for the construction of the hull.

In Malta small ships are regulated by the Commercial Vessels Regulations 2002 and the Code of Practice for the Safety of Commercial Vessels which apply to all commercially operated craft whilst operating in Maltese waters and, *inter alia*, to those which carry cargo and vessels which carry cargo and/or passengers.

The Code is a code for the construction, machinery, equipment, stability, operation, manning, examination, certification and maintenance of vessels in commercial use for the carriage of cargo, equipment and passengers and other vessels employed in port services and for the servicing of ships.

Furthermore under Maltese law the Small Ships Regulations of 1 August 2008, as subsequently amended, regulate craft under 24 metres in length solely in the navigation within the territorial waters of Malta, whether mechanically driven or not, and whether

⁶² Law 5 June 1962, no. 616, *Sicurezza della navigazione e della vita umana in mare*, G.U. 5 July 1962, no. 168.

⁶³ D.P.R. 8 November 1991, no. 435, *Approvazione del regolamento per la sicurezza della navigazione e della vita umana in mare*, G.U. 22 January 1992, no. 17.

privately or commercially used; and includes, but is not limited to, all types of craft such as sailing boats, yachts, fishing vessels and other craft used for fishing.

The said Regulations provide *inter alia* for the registration of small ships with the Authority for Transport in Malta, safety equipment on board small ships, insurance coverage, seaworthiness, speed in harbours and bays, nautical licence, hire of small ships, offences and enforcement, and so on. However, these regulations do not provide for passenger counting for small ships carrying 12 passengers or less.

In the Netherlands, instead, ships carrying 11 passengers or less are not obliged to obtain a National Safety Certificate.

The description above shows that the legal framework applicable to small ships in the EU is far from being uniform, and it is the Contractor's view that the circumstance that small ships have to comply with different set of rules within the EU is in clear contrast with the principles of the internal market.

As to sailing ships engaged on domestic voyages, Directive 2009/45/EC does not apply to vessels not propelled by mechanical means (Article 3, par.2 lett. (a)(ii)), and therefore they are out of the scope of the Directive.

SOLAS rules do not apply either to sailing ships, as the Convention does not apply to ships which are not propelled by mechanical means (Ref. SOLAS Chapter I Reg. 3 (a)(iii) - Exceptions).

Sailing ships are not subject to a comprehensive set of rules in Italy (Law no. 616/62 and Decree no. 435/91).

In Malta, Section 7.6 of Code of Practice for the Safety of Commercial Vessels contains requirements specifically intended for sailing ships. This is applicable to local and foreign flagged ships whilst operating in Maltese waters on the basis of regulation 2 of the Commercial Vessels Regulations 2002 and the definition of "commercial vessel" under regulation 3 of the said Regulations.

In the Netherlands, sailing vessels shorter than 40 metres and with a capacity of less than 36 passengers are subject to the so-called White Rules. "Register Holland", a classification society accredited by the Dutch Government, drafted these rules for the classification of the subject vessels. If a ship obtains a class certificate from Register

Holland based on these White Rules, Dutch Authorities will issue the National Safety Certificate for these ships⁶⁴.

We have been informed that, although sailing ships do not fall within the scope of the Directive 2009/45/EC as they are not mechanically propelled, some Member States do not agree with this interpretation. Therefore, for the sake of convenience, several shipowners have chosen to voluntarily apply for certification under the above Directive.

In this respect, we have been informed that in the certification process it has been found that requirements on intact stability, construction of watertight doors, structural fire protection, sprinkler systems and emergency escapes are impossible to comply with for several sailing vessels.

In addition, it is referred that sailing vessels registered in the Netherlands do encounter problems when sailing in other Member States.

8.3 Ships made of material other than steel

Today, the vast majority of small craft (whether for leisure or commercial use) are built using composite materials.

In addition, composites have been regularly used for the construction of megayachts and high speed craft such as surface effect, catamaran ferries, patrol boats and rescue vessels for well over two decades.

Until recently, SOLAS prohibited the use of lightweight construction materials by requiring (Chapter II-2 Reg.11)⁶⁵:

"The hull, superstructures, structural bulkheads, decks and deckhouses shall be constructed in steel or equivalent materials....."

In July 2002 a new SOLAS regulation 17 (part F), provided for "*Alternative design and arrangements*" that made it possible to use a functionally based safety

⁶⁴ See: <http://www.register-holland.nl/index.php?id=16>.

⁶⁵ Technical feasibility studies have been undertaken since 2002 concerning ships built of composite materials: T. HERTZBERG, LASS, Lightweight Construction Applications at Sea, available at: http://www.assnu/Reports/LASS-SP_Report_2009_13.pdf.

design instead of the earlier design based solely on prescriptive rules. This new regulation opens up for the possibility of using any construction materials provided that the same level of safety can be demonstrated as if the standard materials defined by the prescriptive regulations had been used for ship design. A problem, however, is that no safety level is defined in SOLAS, i.e. the code provides a set of prescriptive rules but no measure of what the usage of these rules means with regards to safety.

When engaged on domestic voyages ships made of material other than steel do not fall into the scope of EU Directive 2009/45/EC. However in some countries such as Spain the construction of new steel small passenger vessels has disappeared. Nearly all the small passenger vessels are constructed in composite materials, partly to avoid the compliance with Directive 2009/45/EC, and partly due to technical advantages of composites for these type and size of vessels⁶⁶.

Based on our research, in some Member States national measures on the safety of such ships have been adopted: in Malta, for example, Section 7.2.2.1 of the Code of Practice for the Safety of Commercial Vessels (10th edition, July 2010), issued in terms of the Commercial Vessels Regulations 2002, provides for construction materials other than steel. This is applicable to local and foreign flagged ships whilst operating in Maltese waters on the basis of regulation 2 of the Commercial Vessels Regulations 2002 and the definition of “commercial vessel” under regulation 3 of the said Regulations.

In Italy this type of ships is subject to safety rules contained in Law no. 616/1962 and mentioned in D.P.R. no. 435/91 that in turn refer to the regulations adopted by the so called *Enti Tecnici* (Classification Societies)⁶⁷.

8.4 Historic ships and traditional sailing vessels

In Europe, it is estimated that more than 5000 ships of historic interest are actively in use⁶⁸.

⁶⁶ Based on the information received the number of passenger vessels constructed of steel or equivalent material, and high speed crafts (both categories subject to the Directive), is about 12% of the total number of passenger vessels operating in Spain under Spanish flag.

⁶⁷ Law 5 June 1962, no. 616, *Sicurezza della navigazione e della vita umana in mare*, G. U. 5 July 1962, no. 168; D.P.R. 8 November 1991, no. 435, *Approvazione del regolamento per la sicurezza della navigazione e della vita umana in mare*, G.U. 22 January 1992, no. 17.

There is not a definition of traditional (or historical) ships in Directive 2009/45/EC or in the IMO SOLAS rules.

The Memorandum of Understanding⁶⁹ on the mutual recognition of certificates for the safe operation of traditional ships in European waters and of certificates of competency for crews on traditional ships (hereinafter “MoU”) - a multilateral agreement between several European Member States - provides the following definition:

“Traditional ships can be 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, and holding a national certificate”.

The vast majority of the category is composed by sailing ships, but it includes a huge variety of old vessels⁷⁰.

Historical ships are still in function and they are often used to transport passengers within national or international waters so it is important to ensure their consistency with safety provisions.

The main legal issue is that, when they operate on international routes, they are exempted from the international and European passenger safety legislation (namely Directive 2009/45/EC) and are subject to different national legislations.

The exemption is due to the fact that none of the traditional ships can comply with modern regulations and remain traditional.

In fact, international and European existing standard rules are not compatible with traditional vessels because they are shaped on modern cargo and passenger ships and call for continuous updates based on the latest technologies in shipbuilding.

⁶⁸ Memorandum of Understanding (hereinafter in this paragraph “MoU”), signed on 28 November 2005 in London by Denmark, Estonia, Finland, Germany, the Netherlands, Norway, Spain, Sweden, the United Kingdom, (MoU), Annex II to Section 1.2, *Standard upon Safe Operation of Traditional Ships in European waters and Standards required for Ship Safety Certification*, page 3.

⁶⁹ Definition provided in the MoU, Section 2, page 5.

⁷⁰ Information available on the website www.blackflag.eu, document *Objectives and Possible Solutions*.

Furthermore, some traditional ships are now converted into passenger vessels but they were not as such at the beginning (i.e. fishing ships now used for commercial purposes).

Another factor impeding the adoption of a common European standards valid for all the categories of vessels is the huge variety of traditional ships⁷¹.

From a legislative standpoint, Italian legislation, for instance, provides for the definition of traditional ships (see Article 7, Law 8 July 2003, no. 172⁷²) without referring to any other specific provision specifying their characteristics and requirements to which such ships have to comply.

As we will see in the following Section some stakeholders confirmed the existence of a legislative gap for such ships, adding that, in their own view, safety rules on traditional ships should take into account the peculiarities of those vessels.

National regimes for traditional shipping are usually limited to shipping on national water so that, when they ply foreign seas, often occur in disputes during port state control, and in this context the lack of a common standard heavily restricts sailing in foreign seas⁷³.

It has also been referred that Dutch flagged traditional sailing vessels encounter problems in other Member States, as 2 Member States do not recognize safety certificates issued by the Dutch State pursuant to national legislation.

Some Governments agreed to accept their neighbour national rules and certificates but, in the growing European integration framework, shipping based on bilateral agreements is not satisfactory any longer.

For example, the above Memorandum of Understanding (MoU) on the mutual recognition of certificates for the safe operation of traditional ships in European waters and of certificates of competency for crews on traditional ships has been signed in

⁷¹ Annex II to Section 1.2 of the MoU available at: <http://www.european-maritime-heritage.org/mou.aspx>.

⁷² G. U. 14 July 2003, no. 161.

⁷³ It is referred that “Many operators, clubs and associations are operating in a legal vacuum since there is no Europe-wide set of rules and/or because some countries do not acknowledge existing provisions. A cruise to Denmark can thus end up being a legal adventure or even hazard”, www.blackflag.eu.

Wilhelmshaven in 2000⁷⁴ by the maritime administrations of 7 European Countries with the purpose of giving mutual recognition of each country's national regulation and certification regarding ship safety and competency. It has represented a first step to promote the elimination of cross-border restrictions in the use of traditional ships within the EU but it was limited to few countries.

In the light of above, an intervention at EU level has been recommended by stakeholders arguing that future EU maritime policy should “*promote further the process of establishing conditions under which European traditional ships can operate across the national borders within the EU*”, suggesting that a future European policy “*should take steps to establish a special value and status of traditional ships in EU policy*”, and the necessity of equivalent but tailor made regulations based on risk assessment rather than on definitions passenger ships or not⁷⁵.

In this respect, also the Council of Europe Recommendation no. 1468 on traditional vessels in operation has recommended the Committee of Minister to encourage further development of a system of mutual acceptability by the maritime authorities of nation states' standards for the safe operation of traditional vessels in European waters⁷⁶.

8.5 Tenders for large passenger ships

A ship tender, usually referred to as a tender, is a boat, lifeboat, or a larger ship used to service a ship, generally by transporting people and/or supplies to and from shore or another ship.

Tendering is necessary because some cruise ship port stops do not have a pier for the larger cruise ships to dock. When tendering is required, some ships use their own

⁷⁴ Such Memorandum has been replaced by the Memorandum of Understanding signed in 2005 in London, the MoU quoted above.

⁷⁵ European Maritime Heritage (EMH), *Response to EU Green Paper “ Toward a future Maritime Policy for the Union: A European vision for the oceans and seas ”*, 29 June 2007, pages 8-9.

⁷⁶ Recommendation 1486 (2000), Maritime and fluvial cultural heritage, of the Parliamentary Assembly of the Council of Europe, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EREC1486.htm>.

lifeboats to carry passengers ashore. For instance, on cruise ships, lifeboat tenders may appear, at first glance, as regular lifeboats, but usually they are larger and better-equipped in order to comply with daily activities.

Thus, on large passenger ships, tenders may have a twofold function:

- carrying passengers and crew from the large passenger ship to the destination safely; and
- granting a safe evacuation of passengers and crew.

Based on the information available, tendering operations have been carried out for many years using lifeboats authorized for this purpose by the flag State, coastal State or classification society.

In general terms it can be said that at international level there are not standards that address operational procedures, performance standards, and manning requirements (including training) for boats when they are used as tenders⁷⁷.

Most of tenders are therefore also approved as SOLAS lifeboat/life raft, and in this case, are subject to the IMO lifeboat standards and to the LSA Code⁷⁸.

However, recently at its session in January 2011, an IMO Sub-Committee, the SLF (Stability, Load Lines and Fishing Vessel Safety) Sub-Committee, decided that tenders not certified as lifeboat should comply with SOLAS II-1 (that is SOLAS rules on construction, structure and stability). Such decision is not yet final⁷⁹.

In turn, Directive 2009/45/EC provides that new and existing ships of Class B, C and D ships shall carry at least survival craft and rescue boats, and requires them to

⁷⁷ See Annex 1, IMO DE 54, Agenda Preview of the 54th session of IMO DE Sub-Committee held on 25-29 October 2010, page 12.

⁷⁸ Notably, they have to comply with Life Saving Appliance (LSA) Code adopted by the Maritime Safety Committee with Resolution MSC 48(66).

⁷⁹ See Lloyd's Register briefing, IMO DE 55, *Agenda preview for clients – Safety Provisions applicable to tenders operating from passenger ships (agenda item 5)*, available on: https://www.cdlive.lr.org/information/Documents/IMOMarineServices2010/FINAL_DE%2055%20agenda%20preview_external%20version.pdf.

⁷⁹ See Lloyd's Register briefing, IMO DE 55, *Agenda preview for clients – Safety Provisions applicable to tenders operating from passenger ships (agenda item 5)*, available on: https://www.cdlive.lr.org/information/Documents/IMOMarineServices2010/FINAL_DE%2055%20agenda%20preview_external%20version.pdf.

comply the Regulations of Chapter III of the Annex to the 1974 SOLAS Convention and to the LSA Code (Chapter XIII of Annex 1 to Directive 2009/45/EC).

As to passenger ships of Class A, they have to comply with the requirements of the SOLAS Convention, therefore their lifeboats have to comply with SOLAS requirements.

Therefore tenders of passenger ships subject to EU legislation which are certified as lifeboat have to comply with SOLAS rules.

Tenders not certified as lifeboats instead seem to fall outside the scope of Directive 2009/45/EC as the Directive applies only to passenger ships engaged on domestic voyages, where domestic voyage means: “a *voyage in sea areas from a port of a Member State to the same or another port within that Member State*” (Article 2), while tenders transfer passengers from a ship to shore and back.

In addition the Directive does not apply to ships engaged in port areas, and tenders operations are limited to port areas in general.

Based on our research at national level no specific rules have been adopted for tenders, and so national authorities require such ships to be certified as lifeboats and to comply with the LSA Code, or issue SOLAS certificates for those tenders not certified as lifeboat. Some Classification Societies have adopted specific standards for those ships when they operate either as lifeboats or as tenders, providing specific certificates.

We have also been informed that Member States require tenders certified as lifeboat also to comply with additional requirements laid down at national level (for example lighting equipment).

That said, it is also questionable that the solution to certify tenders as a lifeboat is appropriate, as the standards for lifeboats do not seem appropriate⁸⁰. For example the standards applicable to lifeboats are not suitable for tenders carrying more than 150 passengers.

In addition, based on the comments received for those tenders registered as lifeboats, some additional requirements are necessary to ensure the safety of vessels

⁸⁰ See Lloyd’s Register briefing, IMO DE 55, *Agenda preview for clients – Safety Provisions applicable to tenders operating from passenger ships (agenda item 5)*, available on https://www.cdlive.lr.org/.../IMOMarineServices2010/FINALDE%2055%20agenda%20preview_externa%20version.pdf

when they are employed as tenders (*i.e.* fire protection system for machinery spaces, additional extinguishers for passenger accommodation, bilge pump, radiocommunication system).

With the purpose to adopt a consistent approach, IMO DE (Design & Equipment) Sub-Committee has been asked to develop guidelines on safety provision applicable to tenders operating from passenger ships which will be applicable to tenders used for transferring more than 12 passengers from a stationary passenger ship to shore and back, and not to inflatable boats or rigid inflatable (RHIB) boats.

The work - which has started to be developed at IMO DE 53th session - is presently ongoing⁸¹. A full discussion on the matter has been held at the 55th session of the DE (Design and Equipment) Sub-Committee in March 2011⁸². The STW (Standards of Training and Watchkeeping) and FP (Fire Protection) Sub-Committees have also been involved.

The final text of the above Guidelines will then be sent to the MSC (Maritime Safety Committee) 90th session in May 2012 for approval.

From the information available such Guidelines provide that if tenders are certified as a lifeboat, lifeboat standards of the LSA Code, chapter IV apply⁸³.

If tenders are not certified as a lifeboat, then the structure and the arrangements of the tender should take into account requirements of the flag Administration for passenger ships of like size and service to the tender.

As to freeboard and stability, again the draft Guidelines refer to chapter IV of the LSA Code for tenders certified as a lifeboat, while for the others is required that freeboard and stability should be of the standard of a SOLAS 90/SOLAS 2009 passenger size of like size and passenger capacity.

⁸¹ The DE will complete its discussion on the guidelines and send the draft text to FP (Sub-Committee on Fire Protection) 55 in July 2011 for finalization. FP is expected to send the final text to MSC 90 (Maritime Safety Committee).

⁸² See Lloyd's Register briefing, IMO DE 55, *Agenda preview for clients*, page.1, available on https://www.cdlive.lr.org/.../IMOMarineServices2010/FINALDE%2055%20agenda%20preview_externa1%20version.pdf.

⁸³ See Guidelines for passenger ship tenders, Report of the drafting group, Sub-Committee on Ship Design and Equipment, 53rd session Agenda item 14, 24 February 2010 (Annex 3).

The document also includes *inter alia* specific provisions on fire detection and extinction, life-saving appliances, visual signs, communication equipment.

Some aspects are not addressed in a specific way, for example provisions on manning refer to the rules of flag States.

However, we are aware that the text of the draft Guidelines has been already criticized by Ireland⁸⁴.

The critiques concern the adequacy of the lifeboat standard for the carriage of up to 150 persons⁸⁵ from ships to shore, as Ireland believes that the standard is not equivalent to passenger ships of like size and service. Another issue is that the LSA Code has minimal requirements relating to structural fire protection and permits the use of combustible materials and has minimal provisions relating to the division between the machinery and accommodation space.

In particular, Ireland suggests that proper guidelines should be developed for tenders that also comply with the lifeboat standards⁸⁶, and that all tenders should comply with the stability requirements of the SOLAS Convention (Chapter II-1), and to the requirements of Chapter II-2 of the above Convention (Fire protection, fire detection and fire extinction).

8.6 Ships carrying offshore workers

Vessels carrying offshore workers today are called to work in several different Member States and very soon they will need to carry more than 12 workers.

Such vessels serve the purpose to transport by sea the so called industrial personnel, which presents the following characteristics.

⁸⁴ See Guidelines for passenger ship tenders, Report of the drafting group, Annex 2, Sub-Committee on Ship Design and Equipment, 53rd session Agenda item 14, 24 February 2010 (Annex 3).

⁸⁵ See Safety Provisions applicable to tenders operating from passenger ships, Comments relating to the Guidelines for passenger ship tenders (Annex 4).

⁸⁶ See the Draft Report to the Maritime Safety Committee, Sub-Committee on Ship Design and Equipment, 55th session, Agenda item 22, 21-25 March 2011 (Annex 2).

Firstly, the persons on board, categorized as Offshore workers - intended as all the individuals carried aboard an Offshore Supply Vessel (OSV) and employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources, from or below the ocean floor, on or at an offshore installation cannot be identified with the typical passengers because they work in the maritime environment and are trained in shipboard emergency procedures.

Secondly, they cannot be identified with the crew which, instead, is composed by *“all persons carried on board the ship to provide navigation and maintenance of the ship, its machinery, systems and arrangements essential for propulsion and safe navigation or to provide services for other persons on board”*⁸⁷.

Finally, since 2008 they cannot be identified as special personnel, that is to say with as all the individuals *“who are carried on board in connection with the special purpose of that ship or because of special work being carried out aboard that ship”*⁸⁸.

Indeed special personnel are expected to be able bodied with a fair knowledge of the layout of the ship and have received some training in safety procedures and the handling of the ship’s safety equipment, and for this reason the special purpose ships on which they are carried need not be considered or treated as passenger ships.

These considerations do not apply to ships that carry industrial personnel, as it cannot be asserted that industrial personnel has a special knowledge of the ship.

In this respect indeed it is worth recalling that the IMO DE Sub-Committee discussed the application of the Code of Safety for Special Purpose Ships (SPS Code) adopted pursuant to Resolution A.534(13)⁸⁹, that is the Code that sets specific

⁸⁷ See Code Of Safety For Special Purpose Ships, 2008, Annex 17, Resolution MSC.266(84) (available at: <http://www.nauticalmind.com/Code-of-Safety-for-Special-Purpose-Ships-2008-edition-pr-79877.html>), Chapter I, paragraph 1.3.3.

⁸⁸ See Code Of Safety For Special Purpose Ships, 2008, Annex 17, Resolution MSC.266(84) (available at: <http://www.nauticalmind.com/Code-of-Safety-for-Special-Purpose-Ships-2008-edition-pr-79877.html>), Preamble, paragraph 3. and Chapter I, paragraph 1.3.11. Safety requirements for Special personnel Vessels are addressed in the new Code of Safety for Special Purpose (SPS) ships. Amended in 2008, the SPS Code designs safety measures for the vessels of new construction having more than 500 gross tonnage and transporting more than 12 special personnel, i.e. those who are not crewmembers or passengers who are carried on board in connection with the special purpose of that ship or because of special work being carried out aboard that ship.

⁸⁹ The Maritime Safety Committee, at its seventy-eighth session, tasked the Sub-Committee on Ship Design and Equipment (DE) with the review the Code of Safety for Special Purpose Ships (SPS Code) (Resolution A.534(13) available at: <http://www.mdnaautical.com/im820.htm>). This revision was concluded by DE 51, giving in-depth consideration to the definition of the term “special personnel”. The

requirements for the ships which carry more than 12 special personnel (so called “special purpose ships”), to ships that transport personnel to offshore facilities and noted that the inclusion of the provisions of the SPS Code to such ships would be inappropriate, since industrial personnel could be classified as passengers.

Such decision has been endorsed by the Maritime Safety Committee at its eighty-fourth session, and therefore the IMO revised SPS Code does not deal currently with the transport of industrial personnel⁹⁰.

Indeed Article 1.2.3 of the Code reads: “*The Code is not intended for ships used to transport and accommodate industrial personnel that are not working on board*”.

The safety standards applicable to vessels carrying offshore workers could be found in the Guidelines for the Design and Construction of Offshore Supply Vessels, 2006 (the OSV Guidelines, Resolution MSC.235(82))⁹¹.

However, OSV Guidelines do not cover the carriage of more than 12 industrial personnel.

On the other hand, the SOLAS Convention allows cargo ships to bring up to 12 persons in addition to the marine and project crew. Above this threshold and if engaged on international voyages, the same vessels have to be considered as *passenger ships* and comply with the related SOLAS requirements.

If engaged on national voyages, vessels carrying offshore workers should be considered as passenger ships and are therefore subject to Directive 2009/45/EC. Indeed the Directive applies to passenger ships engaged on domestic voyages, where:

“*a passenger ship*” means “*a ship which carries more than 12 passengers*”, and ‘*passenger*’ means:

decision was that such definition should prescribe a link to a professional career at sea and should give special consideration to the personnel of sail training ships.

⁹⁰ The Code recommends design criteria, construction standards and other safety measures for special purpose ships.

This Code provides for a certificate, called a Special Purpose Ship Safety Certificate, which should be issued to every special purpose ship. Where a special purpose ship is normally engaged on international voyages as defined in SOLAS it should, in addition, also carry SOLAS safety certificates, either:

1 for a passenger ship with a SOLAS Exemption Certificate; or

2 for a cargo ship with a SOLAS Exemption Certificate, where necessary, as the Administration deems appropriate.

⁹¹ Available at: http://www.mpa.gov.sg/sites/circulars_and_notices/pdfs/shipping_circulars/sc07-12aj.pdf.

“every person other than:

(i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and

(ii) a child under one year of age”.

In the light of such definition it can be concluded that to the ends of Directive 2009/45/EC offshore workers are to be qualified as passengers.

In addition, we have been informed that at national level some Member States apply specific provisions to vessels carrying offshore workers. In Italy for example Guidelines for such vessels have been issued by the public administration and they refer to the above Code for Special Purpose Ships (SPS Code)⁹².

That said it does not seem that the mere application of SOLAS or Directive 2009/45/EC rules to vessels carrying offshore workers is satisfactory.

It is acknowledged that such vessels transporting offshore workers are usually specialized and technically sophisticated ships. These vessels have specific features required for their particular operations.

The environment in which they operate is often demanding, often in remote places and in deep waters. The technology of these vessels has to continually improve to cope with their changing environments and operational requirements.

In addition SOLAS and Directive requirements, are often too strict because these vessels engaged in operations mainly connected with the oil industry but also with offshore wind farms, wave and tidal power stations, present a special design due to the services they have to render/serve⁹³.

The brief description above shows that there is a need for clarification and guidance with respect to issues of classification of vessels in the offshore industry as they cannot easily be classified under existing codes, as also recognised by IMO, and as

⁹² See D.P.R. 8 November 1991, no. 435, *Approvazione del regolamento per la sicurezza della navigazione e della vita umana in mare*, G.U. no. 14 of 22 January 1992 (Article 13, paragraph 1, lett. c) and the *Circolare - Sicurezza della Navigazione*, G.U. 9 April 2004, no. 51.

⁹³ See Maritime Safety Committee, 85th session, Agenda item 23, Work Programme, Proposal for the development of a new Code covering Offshore Construction Support Vessels, Annex Justification For a Proposed New Work Programme Item, available at: http://legacy.sname.org/committees/tech_ops/O44/imo/msc/85-23-4.pdf.

standards for passenger ships do not seem appropriate. During the discussion on the SPS Code in 2008, ambiguities were identified and a proposal for the draft of a Code covering Offshore Construction Support Vessels has been put forward.

Anyway, during DE 53 Session⁹⁴ held in 2010, there were no support to develop a new specific Code as the existing requirements, such as those contained in 2008 SPS Code or in OSV Code, were considered adequate, even though some further interpretations of 2008 SPS Code were required. Notably, IACS (International Association of Classification Societies) has proposed to discuss in the DE 55 IMO Session an interpretation of the Code on specific points.

Such unified interpretation have been discussed and agreed during DE 55 Session but overall it does not seem that the IMO expressed a serious intention to address specifically all the issues raised by vessels carrying offshore workers⁹⁵.

From all above, it can be concluded that on the one hand safety rules applicable to vessels carrying offshore workers are far from being clear, and on the other hand it seems that the IMO does not intend to address the issues brought about by the increased tendency to transport offshore workers by sea, despite the fact that such vessels need specific standards.

In this context, it could be beneficial to explore the possibility of an EU intervention aimed at identifying which requirements a ship should comply in order to be allowed to carry offshore workers, giving the possibility to Member States to issue specific safety certificates that would allow such vessels to freely circulate within the EU.

8.7 European registered cruise ships operating in polar areas

⁹⁴ See Lloyd's Register briefing, *IMO DE 55, Agenda preview for clients, Classification of offshore industry vessels and consideration of the need for a Code for offshore construction support vessels* (agenda item 15), page.1, available on https://www.cdlive.lr.org/.../IMOMarineServices2010/FINALDE%2055%20agenda%20preview_external%20version.pdf.

⁹⁵ See the Draft Report to the Maritime Safety Committee, Sub-Committee on Ship Design and Equipment, 55th session, Agenda item 22, 21-25 March 2011(Annex 2).

Navigation in polar areas has to be considered unique compared to all ship operations. As known indeed ships operating in such areas are exposed to a number of risks related to poor weather conditions, relative lack of good charts, the remoteness of the areas making rescue operations more difficult, the cold temperature reducing the effectiveness of numerous component of the ship. In addition presence of ice can impose additional loads on the hull, propulsion system and appendage⁹⁶.

Cruise ships engaged in polar areas are in general engaged on international voyages, though it cannot be excluded that in some cases such ships can be engaged on domestic voyages. Therefore, the safety requirements provided by the SOLAS Convention or by Directive⁹⁷ 2009/45/EC for passenger ships apply to these ships, according to their size and the date of their construction and other few specific provisions concerning navigation in polar areas.

In turn the only requirements in the SOLAS Convention directly relating to polar areas are contained in SOLAS Chapter V (Safety of Navigation) and concern the safety of navigation.

A number of northern countries have established specific regulatory regimes to deal with operations in their own coastal Arctic waters, and many of the leading classification societies have developed rules for the design of ice-capable. However, none of the existing systems are compatible with any of the others. This imply that a ship designed for one operation may have great difficulty in transferring to another, and often incurring considerable costs and delays in the process. Meanwhile, the complexity of working with multiple systems causes confusion which can itself present safety hazards.

In this context the International Maritime Organization (IMO) and private actors such as the various Classification Societies (CS), have understood that the above mentioned hazard relating to the presence of ice in polar areas and other factors require

⁹⁶ H. DEGGIM, *International Requirements for Ships Operating in Polar Waters*, Meeting of experts on the management of ship-borne tourism in the Antarctic Treaty Area, Wellington, New Zealand, 9 to 11 December 2009, available at: <http://ebookbrowse.com/international-requirements-for-ships-operating-in-polar-waters-h-deggim-pdf-d37174822>.

⁹⁷ For example the Directive will apply to a ship engaged on a voyage between two Swedish ports.

special construction requirements and navigational skills and have started regulating the standards and the rules of safety for ships operating in polar areas⁹⁸.

We can identify different instruments: the non-legally binding IMO “Guidelines for ships operating in polar waters” (Resolution A.1024(26))⁹⁹ that apply only to ships constructed on or after 1 January 2011 and are only of recommendatory nature and the IACS (International Association of Classification Societies) “Unified Requirements for Polar Ships”¹⁰⁰ which standardized global ice classification specifications.

That said, the main outstanding issue concerning navigation in polar waters is the absence of an international legal framework that mandatorily applies to all the ships operating in polar areas.

To deal with these problems, an International Code of Safety for Ships in Polar Waters (Polar Code) is being developed, under the auspices of the IMO. This will represent a harmonization of existing national systems.

Based on the information available, the Polar Code will cover only additional requirements for polar waters, rather than providing a stand-alone document which would repeat or contradict existing requirements for other operations

The target completion date is 2012. The Polar Code will be made up of two parts with mandatory requirements, which potentially cover structural, fire, safety and stability aspects, in one part and recommendatory requirements in the other. It will supplement relevant instruments, including SOLAS and MARPOL for ships operating in polar waters in order to address the risks that are specific to operations on polar waters, taking into account the extreme environmental conditions and the remoteness of operation. As the Code will apply to international voyages its scope will differ from the scope of Directive 2009/45/EC, which applies to domestic voyages.

⁹⁸ Ø. JENSEN, *Fridtjof Nansen Institute(FNI) Report “The IMO Guidelines for Ships Operating in Arctic Ice-covered Waters – From voluntary to Mandatory Tool for Navigation Safety and Environmental Protection?”*, 2007: available at: <http://www.fni.no/doc&pdf/FNI-R0207.pdf>.

⁹⁹ The Guidelines were adopted by the twenty-sixth session of the IMO Assembly in December 2009. Available at: [http://www.sofartsstyrelsen.dk/SiteCollectionDocuments/CMR/Sejladssikkered.GMDSS%20og%20SAR/A.1024\(26\)%20Guidelines%20for%20ships%20operating%20in%20polar%20waters.pdf](http://www.sofartsstyrelsen.dk/SiteCollectionDocuments/CMR/Sejladssikkered.GMDSS%20og%20SAR/A.1024(26)%20Guidelines%20for%20ships%20operating%20in%20polar%20waters.pdf).

¹⁰⁰ Available at: http://www.iacs.org.uk/document/public/publications/unified_requirements/pdf/ur_i_pdf410.pdf.

The Polar Code also addresses the fact that the polar environment imposes additional demands on ship systems such as: navigation, communications, lifesaving, fire-fighting, etc. It emphasizes the need to ensure that all ship systems are capable of functioning effectively under anticipated operating conditions, notably the possibility of extreme cold. It stipulates that systems should provide adequate levels of safety in emergency situations. In addition, it recognizes that safe operation in polar conditions requires specific attention to human factors including training and operational procedures.

All ships operating under the Polar Code should carry on board a sufficient number of Ice Navigators to guide operations when ice is present. This new international Ice Navigator certification in turn requires training and experience qualification procedures, which have been agreed in general form and which will be finalized prior to the implementation of the Polar Code. The training for Ice Navigators will likely include the development of an IMO model course possibly combined with the use of an ice navigation simulator.

The Polar Code will also address the possible impact of shipping operations on the environment in a comprehensive manner.

Based on the latest information works for the development of such Code are progressing¹⁰¹ and the Sub-Committee DE agreed that the issues related to the manning and training of personnel on board ships operating in polar waters need to be addressed¹⁰²¹⁰³.

¹⁰¹ See the Draft Report to the Maritime Safety Committee, Sub-Committee on Ship Design and Equipment, 55th session, Agenda item 22, 21-25 March 2011 (Annex 2).

¹⁰² IMO DE 54 Report, Llyod's Register report on the 54th session of IMO Sub-Committee on Ship Design and Equipment, 3 November 2010: [https://www.cdlive.lr.org/information/Documents/IMO MarineServices2010/LR%20IMO%20DE%2054%20Report.pdf](https://www.cdlive.lr.org/information/Documents/IMO%20MarineServices2010/LR%20IMO%20DE%2054%20Report.pdf).

¹⁰³ In addition, the IMO has addressed recently issues related to the training of personnel serving on board ships operating in polar waters. Indeed, the IMO's Sub-Committee on Standards of Training and Watchkeeping (STW) has been working on a comprehensive revision of the STWC Convention and the STWC Code, and considered also the option of introducing mandatory minimum requirements for the training and qualification of navigators serving on board ships operating in areas where ice or ice floes are likely to be present in chapter V (Special training requirements for persons on certain types of ships) of the STWC Convention and in the STWC Code. Source: H. DEGGIM, *International Requirements for Ships Operating in Polar Waters*, Meeting of experts on the management of ship-borne tourism in the Antarctic Treaty Area, Wellington, New Zealand, 9 to 11 December 2009, available at: <http://ebookbrowse.com/international-requirements-for-ships-operating-in-polar-waters-h-deggim-pdf-d37174822>.

Discussions are currently concerning the risks related to the difficulties of search and rescue operation in polar areas, due to their remoteness¹⁰⁴.

8.8 Ships engaged on intra-European routes

EU Directive 2009/45/EC (and originally Directive 1998/18/EC) applies only to domestic voyages, i.e. alongside the national coastline of the same Member State. The consequence is that, due to the lack of EU regulation, ships engaged on voyages that involve ports of two Member States have to comply with the international standards laid down by the well known IMO SOLAS Convention.

The legislative choice to adopt standards at European level which apply only to ships engaged on domestic voyages is justified on many grounds.

In particular, in 1996 the European Commission found that the extension of the scope of the Directive to passenger ships operating on international voyages and hence subject to the requirements of the international SOLAS Convention, would not have been appropriate at that stage as it would not have been consistent with some principles on which the EU maritime transport policy itself is inspired: in particular the need to avoid the adoption of unilateral legislation in international trade, and the need not to undermine the principle of international harmonisation of safety standards within the International Maritime Organisation.

The Manila amendments to the STCW Convention and Code were adopted on 25 June 2010, marking a major revision of the STCW Convention and Code. The 2010 amendments are set to enter into force on 1 January 2012.

Amongst the amendments, the IMO adopted new training guidance for personnel serving on board ships operating in polar waters. The Standards of Training, Certification & Watchkeeping (STCW) Convention was drafted in 1978. It was the first Convention to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. Previously the standards of training, certification and watchkeeping of officers and ratings were established by individual governments. The Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed.

The Convention did not deal with manning levels: IMO provisions in this area are covered by a regulation in Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974, whose requirements are backed up by resolution A.890(21). In 1995 the US Coast Guard approached the International Maritime Organization (IMO) and asked them to amend this Convention. Significant changes were made to it. The amendments completely re-wrote enforcement related to the Convention, and created a STCW Code that set stringent standards for mariners to meet.

¹⁰⁴ Development of a Mandatory Code for Ships Operating in Polar Waters, Comments submitted by Denmark, 55th Session, Agenda item 12, 31 January 2011: <http://www.sigling.is/lisalib/getfile.aspx?Itemid=5441>.

However, as recognised by the Commission itself in its Proposal for a Directive on safety rules and standards for passenger ships adopted in 1996¹⁰⁵, the fact that all international voyages fall under international rules gives rise to some concerns.

For example, the SOLAS Convention allows flag administrations to exempt from some of the SOLAS requirements individual ships or classes of ships which, in the course of their international voyages, do not proceed more than 20 miles from the nearest land (see Regulation no.1, Chapter II-1)¹⁰⁶.

It follows that some ships engaged on intra-European routes might not fall under EU legislation and might fall outside the scope of some of the SOLAS rules¹⁰⁷.

Another issue is more general and concerns the fact that too many regulations of the IMO SOLAS Convention contain vague expressions or leave the interpretation to the administrations of the flag state, and, as a consequence, there is a margin for different application of the above rules in the States which are members of the SOLAS Convention.

National authorities of small Member States have also pointed out that there are many vessels engaged on both domestic and occasional short international voyages, involving the jurisdiction of more Member States, thus falling outside the scope of EU legislation.

Such a situation seems at odds with the objective of realizing an integrated EU internal market, if we compare the situation of the above vessels with the one of other vessels, mainly active in big Member States, which may find themselves making long

¹⁰⁵ Proposal for a Council Directive on safety rules and standards for passenger ships, COM(96)61, available at: <http://eur-lex.europa.eu>.

¹⁰⁶ On this respect as known the International Maritime Organization in the MSC Circular 606 of 12 February 1993 on "Port State Concurrence with SOLAS exemptions" has issued a recommendation to overcome disputes between flag States and host States on exemptions granted by the flag State by inviting the involved Administrations to work together to resolve any disagreements concerning the suitability of such exemptions. While Directive 2009/45/EC stated that the Community (now EU) shall submit requests to the IMO to adopt measures for mandatory application of the principles underlying the provisions of the above Circular.

¹⁰⁷ For example the distance between the Italian Port Santa Teresa di Gallura and the French Port of Bonifacio is around 12,5 miles: <http://maps.google.com/maps?hl=it&tab=wl>; while the Italian Port of Trieste and the Slovenian Port of Koper is 9 nautical miles: <http://www.searates.com/reference/portdistance/>. Such voyages have to be considered international voyages.

voyages but have to comply only with the requirements of Directive 2009/45/EC as they operate between two ports of the same Member State.

In this respect it has been pointed out that a 250 sea miles passage from Patras (Greece) to Brindisi (Italy), has to be considered as an international voyage in the EU, while in the USA 2000 sea miles from Houston to New York City is held to be a domestic voyage¹⁰⁸, and that this striking difference between similar situations is considered to entail severe (economic) consequences at all levels of shipping and could be considered at odds with a common transport strategy and a further development of the European single market.

From all of the above it follows that the fact that ships engaged on intra-European routes are considered as engaged on international voyages seems to prevent the Directive 2009/45/EC from achieving one of its main objectives, namely eliminating obstacles to the free movement between Member States and contributing to the creation of a fully integrated internal market¹⁰⁹.

The issues raised are even more serious for ships that do not fall under the scope of IMO SOLAS Convention such as for example sailing ships and historic ships: indeed such ships when engaged on intra-European routes have to comply with the rules of different Member States, and do not have the possibility to obtain a safety certificate ensuring them access to ports of States other than their flag State.

We know for example that even in the EU itself some Member States do not accept safety certificates issued by the authorities of other Member States, notably those issued for sailing and historic vessels.

¹⁰⁸ Example provided by A.J. CORRES, *Some thought on the Strategic Role of Coastlines*, presentation held at The Marseille Maritime 2008 forum: available at http://www.mareforum.com/Marseille_Maritime_2008_presentations.htm.

¹⁰⁹ During the Forum on The Mediterranean Basin Shipping Future held in Marseille in 2008, the issue related to the lack of a common maritime policy has been pointed out as a serious problem involving different negative consequences at all shipping levels: A. J. CORRES, *Some thought on the Strategic Role of Coastlines*, presentation held at The Marseille Maritime 2008 forum: available at: http://www.mareforum.com/Marseille_Maritime_2008_presentations.htm.

9 STAKEHOLDERS' VIEWS ON EXISTING SAFETY GAPS AND RELATED OBSTACLES TO THE INTERNAL MARKET

9.1 Introduction

In this Section we refer to the opinions of national maritime safety authorities and of maritime stakeholders on possible safety gaps and related obstacles to the internal market previously identified on the basis of desk research activities.

In order to assess whether some of the above gaps are perceived by maritime safety authorities and stakeholders as existing safety gaps and related obstacles to the internal market we have asked national maritime authorities and other stakeholders active at national and European level to reply to seven groups of questions.

The first five groups include questions that referred to specific pieces of relevant legislation addressing safety and/or internal market issues.

The last two groups include questions of general scope aimed at assessing what is the perception of stakeholders on the impact of EU legislation on the market for transport of passengers by sea.

9.2 Questions concerning the impact and the scope of Directive 2009/45/EC

The first group of questions is aimed at identifying safety issues not covered by Directive 2009/45/EC and that should be covered by such act. In this respect the following questions have been addressed:

- *Do you think that the scope of the Directive is appropriate, should it cover further types of passenger ships, e.g. small ships, ships made of other material than steel, sailing ships? If yes which? What is the situation for ships not covered by the directive in the Member State where you operate?*
- *In particular what do you suggest should be done with respect to historic ships? Ships transporting off shore workers?*

Tenders for large passenger ships? European registered cruise ships operating in polar areas?

- *Do you think that adopting specific EU legislation setting standards for such ships would be appropriate? Or should EU legislations just impose to Member States to recognize standards adopted in other Member States?*
- *Do you think that such vessels should be subject only to international rules? Would they be appropriate to ensure the safety of vessels not covered by EU legislation?*
- *What problems do you foresee if EU legislation is adopted/is not adopted?*
- *Does the fact that different standards apply to those vessels transporting people, which are not covered by the Directive and, consequently its national implementing measures, affect the possibility of vessels registered in other Member States to engage in domestic trips in your jurisdiction? If so how?*
- *Do you think that the EU should play a more proactive role in the procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages?*
- *Currently there is a clear distinction within the EU between IMO rules governing the safety of passenger ships engaged in international voyages and EU rules which govern those passenger ships engaged in domestic voyages. However passenger ship journeys are not necessarily restricted to one of these two categories; they may combine both. Do you consider it advisable to extend the Directive's provisions to cover both domestic and intra-EU trade, for example, where Class B vessels may make short international trips? If not, how can this aspect best be addressed?*

9.2.1 Comments from Member States maritime safety authorities

We did not receive comments by all maritime authorities in connection with Questionnaire no. 2. However, some of them have provided interesting input on Part II of this Study when replying to questions on the relevance of Directive 2009/45/EC. In particular, as explained in Part I some authorities have expressed the view that the scope of the Directive is not appropriate, as the Directive does not cover vessels constructed in materials other than steel and its provisions are not suitable in particular for small C and D vessels, as its rules are based on SOLAS ones, with certain exemptions for B, C or D vessels. Notably they do not seem well targeted considering the size and operation areas of these vessels which are very different from the typical size and voyage conditions of vessels engaged on international voyages (SOLAS vessels).

One authority provided a more comprehensive reply suggesting that Directive 2009/45/EC, or in any case European legislation, should address small ships issues, and cover historic ships, ships made of other material than steel, wind farm service vessels. In addition, it was pointed out that for sailing ships would be better to have a specific

Directive, but if not possible at least the scope of Directive 2009/45/EC should be extended to cover them.

It suggested also that the existence of different national rules for ships not covered by EU legislation does constitute an obstacle to the free movement of services within the EU, as in practice Member States require foreign ships not covered by Directive 2009/45/EC or by SOLAS standards, to comply with additional national requirements, when such ships provide services in their jurisdiction. In this context, it has been pointed out that EU legislation imposing that Member States recognize each other standards would solve many of the internal market issues raised above.

Finally, action with respect to sailing vessels and vessels carrying offshore workers is perceived as an urgent issue to be addressed, as in the absence of legislation on this respect national not proportionate and often discriminatory rules continue to apply. On the other hand for vessels carrying off-shore workers there is a risk that in the absence of EU legislation operators will register their ships in the Member State where standards are low.

9.2.2 Comments from other stakeholders

Stakeholders' views on the opportunity to adopt EU measures with respect to ships that fall outside the scope of the Directive diverge. In this respect some of them believe that SOLAS rules should apply to such vessels, and exclude that the adoption of European legislation would be appropriate, as it would in general imply more administrative overload and higher demand in regards to training on different legislation.

Other stakeholders have expressed instead a more nuanced opinion suggesting that the scope of Directive 2009/45/EC should be expanded so as to include ships built in material other than steel and that specific standards should be adopted for them.

As to small ships it is argued that the standards of the Directive as well as SOLAS standards are not appropriate for small ships and that the Directive should apply to ships of 24 metres in length or to ships of above 45-50 metres, while for ships below such thresholds specific standards should be applied.

Other stakeholders have argued that to extend the scope of the Directive to small vessels would be a disproportionate measure as it will put the controlling Member States' maritime authorities in front of an impressive task, deviating them from their main objectives, the big vessels transporting hundreds of people.

As to historic ships¹¹⁰, it is suggested that when they are extensively restructured in a way to extend their life time they should fall within the scope of the Directive.

Some other stakeholders are of the view that historic big vessels have to comply with regulations, only up to the point where their historic nature is not put in risk by their application and that equivalences have to be used with these vessels. It is also suggested that a definition of what should be considered "primitive build" should be provided.

The stakeholders contacted do not suggest the adoption of specific provisions with respect to ships carrying off-shore workers but refer to IMO rules for Offshore Supply Vessel (OSV Code, Resolution MSC.235(82) as amended by Resolution A.836(20) or the rules for "Special Purpose Ships" (1983 SPS Code, Resolution A.534(13)).

As to tenders for large passenger ships stakeholders tend to agree¹¹¹ that existing international rules already provide appropriate rules. Reference has been made to the LSA Code (*Life Saving Appliances Code*) adopted by the Maritime Safety Committee by Resolution MSC. 48 (66) and in general it has been argued that regional rules should not be adopted.

Stakeholders tend to agree that European registered cruise ships operating in polar areas should simply be subject to SOLAS rules combined with the rules included in the "Guidelines for ships operating in polar waters" (IMO Resolution A. 1024(26) adopted in 2009), and that global rules are better suited to regulate the shipping sector than regional ones. Others have suggested that Directive 2009/45/EC should apply to such ships.

¹¹⁰ In Italy historic ships are subject to Law 8 July 2003 no. 172, *Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico*, G.U. 14 July 2003, no. 161. The law includes a definition of historic ships but does not lay down safety standards.

¹¹¹ It was suggested that to tenders for large passenger ships should be applied the standards applicable to safety ships in combination with standards applicable to ships different from steel that are allowed to travel up to 3 miles off the coast (concerning the necessity to have an extinguishing plant in the engine room, or additional fire extinguishers in the passengers' area).

Stakeholders also tend to agree that the existence of different national legislations applying to ships not covered by Directive 2009/45/EC does constitute an obstacle to the internal market as in general Member States apply to ships registered in other Member States their own rules when such ships are engaged on domestic voyages, in order to avoid that foreign flagged ships have a competitive advantage over national ships.

Some stakeholders have also commented on the role of the EU, suggesting that it should be stronger in the procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages. In this respect they suggest that within IMO there should be only the representation of the EU and not of each Member State. Some of them have also pointed out that while EU efforts should be directed at harmonizing existing rules, and new ones coming out from IMO, in order to have just one common and harmonising regulation body, such an effort should not be directed at creating a new European maritime order.

Only two stakeholders have suggested that the provisions of Directive 2009/45/EC should apply also to ships engaged on intra-EU routes.

9.3 Questions concerning the impact of Directive 1999/35/EC

The second group of questions is aimed at assessing the impact of Directive 1999/35/EC with a view to identifying safety gaps in the area covered by this Directive.

In this respect the following questions have been addressed:

- *Do you think that the initial verification and regular on-board and specific surveys required under the Directive are appropriate to ensure safe operation of regular ro-ro ferries and high-speed craft services?*
- *Does the national provision implementing the Directive apply also to vessels engaged in domestic voyages in sea areas covered by Class B, C, and D of Directive 2009/45/EC? Do you think that the surveys required under this Directive should apply also to vessels voyaging in areas other than those covered by Class A as provided by Directive 2009/45/EC?*
- *Do you think that the fact that regular on board and specific surveys are to be carried out once in every 12 month period is an appropriate measure to ensure safety of the regular ro-ro ferries and high-speed craft? Can you suggest another timeline?*

- *Do you think that the cooperation mechanisms put in place by the Directive ensure that host States involved in accident investigations co-operate? Should they be more specific?*
- *Has co-operation in investigations effectively taken place? Are there difficulties, if yes which?*
- *Should the regular on-board survey arrangement be extended as to cover not only ro-ro passenger ferries and High Speed Passenger Craft but also to other passenger vessels? If so, should this be limited to passenger ships on domestic voyages or also include intra – EU Member State voyages?*
- *Are there any aspects of the technical standards that should be raised?*

9.3.1 Comments from Member States’ maritime safety authorities

Initial verification and regular on-board and specific surveys required under the Directive are considered as appropriate tools to ensure the safe operation of regular ro-ro ferries and high-speed craft services by maritime safety authorities. The latter are satisfied with the timeline of regular on board and specific surveys as well as with the co-operation mechanisms put in place by the Directive. In general, an extension of the scope of this Directive is perceived as an unnecessary burden for the Public Administration.

9.3.2 Comments from other stakeholders

Stakeholders tend to agree that the initial verification and regular on-board and specific surveys required under the Directive are appropriate to ensure the safe operation of regular ro-ro ferries and are satisfied with the timeline of regular on board and specific survey. They would limit the scope of the Directive to vessels engaged in domestic voyages in sea areas covered by Class A.

Some of them are also satisfied with the co-operation mechanisms put in place by the Directive and in general by the accident investigation procedures applied by national maritime administrations.

It has also been suggested that the regular on-board survey arrangement should be extended to include big passenger vessels on intra-EU Member State voyages.

9.4 Questions concerning the impact of Regulation no. 4055/86/EEC

The third group of questions is aimed at assessing the impact of Regulation no. 4055/86/EEC on the internal market for maritime transport services.

In this respect the following questions have been addressed:

- *Do you think that despite the provisions of Regulation n. 4055/86 it is still difficult to carry passengers by sea between any port of a Member State and any port or off-shore installation of another Member State or of a non-EU country?*
- *If yes what are the obstacles? Are obstacles related to safety issues or to different safety measures?*

9.4.1 Comments from Member States maritime safety authorities

Only one authority refers that it is still difficult to carry passengers by sea between a port of a Member State and one of another Member State, and this is due to the existence of different construction or operational requirements.

9.4.2 Comments from other stakeholders

Based on the comments we received from stakeholders, despite Regulation 4055/86/EEC giving Member State nationals (and non-Community shipping companies using ships registered in a Member State and controlled by Member State nationals) the right to carry passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State or of a non-Community (now EU) Country, there are still obstacles to carrying passengers by sea between a port of a Member State and a port or off-shore installation of a non-EU Country. However, such obstacles are not related to safety issues but to discriminatory behaviours adopted by authorities of non-EU countries and to discriminatory rules in force in the above

countries such as port taxes, or rules applied for authorizations to open branches or offices in such countries.

9.5 Questions concerning the impact of Regulation no. 3577/92/EEC

The fourth group of questions is aimed at assessing the impact of Regulation no. 3577/1992/EEC on the internal market for maritime transport services.

In this respect the following questions have been addressed:

- *Are there in your jurisdiction obstacles to the provision of cabotage services for EU shipowners?*
- *If yes are they related to safety issues? Are vessels registered in another Member State not allowed to provide cabotage services on the ground that they don't comply with specific safety standards in your State?*

9.5.1 Comments from Member States maritime safety authorities

It was confirmed by one authority that there are no obstacles to the provision of cabotage services for EU shipowners.

9.5.2 Comments from other stakeholders

Stakeholders have confirmed that in general there are no obstacles to the provision of cabotage services for EU shipowners related to safety issues.

9.6 Questions concerning the impact of Regulation no. 789/2004/EC

The fifth group of questions is aimed at assessing the impact of Regulation no. 789/2004/EC on the internal market for maritime transport services.

In this respect the following questions have been addressed:

- *Are there in your experience ships that should benefit from the provisions of Regulation 789/2004, and that do not? In particular is the fact that it applies only to passenger ships covered by Directive 2009/45/EC not enough to ensure the elimination of technical barriers to the transfer of passenger ships flying the flag of a Member State between the registers of the Member States?*
- *How does the exchange of information between the Member State of the losing and the Member State of the receiving register works? Does your State give/receive vessels smoothly, or does the process take long time?*
- *Are any delays for notifying to the Commission refusals to issue, or to authorise the issuing of new certificates to a ship reasonable in the Member State where you operate? Are the refusals fair?*
- *Are you aware of situations in which your Member State or the recognised organisation acting on its behalf, does not issue certificates to the ship under the same conditions as those issued under the flag of the Member State of the losing register and require the ship to comply with further requirements?*

9.6.1 Comments from Member States' maritime safety authorities

It is suggested that the scope of this Regulation should not be extended to more ships and that the exchange of information takes place through shipowners.

Slightly different opinions have been expressed with respect to the functioning of the process for the transfer of ships from the registers of two Member States: while for some authorities the process does not take much time, for other authorities the process can be slow sometimes, and they have referred that in some cases they have not agreed with the requirements applied by the Member State of the losing register.

However, based on the comments of the authorities it seems that in the Member States analyzed refusals to issue certificates under the same conditions as those issued under the flag of the Member State of the losing register of a ship are rare.

9.6.2 Comments from other stakeholders

Based on comments received by some stakeholders, some Member States such as Italy require a ship to comply with further requirements after the transfer of a ship from

a register of another Member State, despite the fact the ship complies with SOLAS and EU requirements and carries the relevant certificates. One company observes that a ship has to comply with the provisions of the Italian Ministerial Decree n. 130/2003¹¹² concerning the radio station which sets requirements that differ from international rules, and to other safety rules such as rules requiring a ships transporting vehicles to have a certain amount of fire extinguishers.

Spanish stakeholders seem satisfied with the application of Regulation 789/2004/EC in Spain and state that they have never received any refusal to the issuing of new certificates and are not aware of situations in which the Member State of the receiving register does not issue certificates to a ship under the same conditions as those issued under the flag of the Member State of the losing register and requires the ship to comply with further requirements. They observe that sometimes they have found much more resistance by the Member State of the losing register than by the one of the receiving register with respect to the exchange of information under Regulation 789/2004/EC.

Overall they believe that Spain as a receiving register Member State has acted very openly.

9.7 Questions of general scope

The sixth and seventh groups of questions are aimed at giving the opportunity to stakeholders to provide their views on issues that should be covered by EU legislation on the safety of passenger ships, in order to eliminate also existing obstacles to their free circulation within the waters and the ports subject to the jurisdiction of EU Member States.

In this respect the following questions have been addressed:

- *What kind of obstacles do passenger ships encounter when providing transport services covering intra-European routes?*

¹¹² D.M. 15 April 2003 no. 130, *Regolamento riguardante la regola tecnica per la costituzione e sistemazione degli impianti radioelettrici da installare a bordo delle navi soggette ai requisiti previsti dal GMDSS*, G.U. 7 June 2003, no. 130.

- *What other aspects of passenger ship safety would in your view be worthwhile to consider at EU level?*
- *What problems do you see in expanding the scope of EU legislation setting safety standards for vessels engaged on intra-European routes.*
- The United States has recently passed the Cruise Ship Security and Safety Act 2010 which deals with personal safety on board cruise ships. It makes provision for obligatory peepholes for passenger cabin doors, security latches and time sensitive key technology. Ship owners would be required to install technology to detect when a passenger falls overboard. In addition, logbooks detailing all deaths, missing persons, alleged crimes and passenger/crew member complaints regarding theft and sexual assault should be in place. These logbooks should be one for public inspection.

Do you consider that similar rules should be in place at EU level to address these issues? Which aspects should they cover? Are there issues that would be best left to the cruise industry to regulate?
- The US Act also makes provision for obligatory training for crew members in crime scene investigation and response and requires on board medical care and provisions should a crime be perpetrated.

Do you think that EU legislation on safety of passenger ships should also consider this aspect? What form should any possible action take?

9.7.1 Comments from Member States maritime safety authorities

One maritime safety authority believes that there are no further aspects of passenger ship safety that would be worthwhile to consider at EU level, and that a risk impact assessment should be carried out before expanding the scope of EU legislation setting safety standards for vessels engaged on intra-European routes. While another authority has been able to identify specific obstacles with respect to intra-European routes: in particular sometimes there is a difference in interpretations of international requirements between surveyors of the different Member states when RoPax inspections are carried out.

However, the position of this authority with respect to the intra-European routes is cautious, as it seems to suggest that EU legislation should cover intra-European routes in so far as it does not affect IMO competence, and therefore in so far as it applies to ships not covered by the IMO SOLAS Convention (e.g. sailing ships).

Finally, authorities have been asked to comment on the appropriateness of introducing at EU level measures such as those passed recently in the United States.

The United States has indeed recently passed the Cruise Ship Security and Safety Act 2010 which deals with personal safety on board cruise ships.

It makes provision for obligatory peepholes for passenger cabin doors, security latches and time sensitive key technology. Ship owners also are required to install technology to detect when a passenger falls overboard. In addition, logbooks detailing all deaths, missing persons, alleged crimes and passenger/crew member complaints regarding theft and sexual assault should be in place.

In addition it makes provision for obligatory training for crew members in crime scene investigation and response and requires on board medical care and provisions should a crime be perpetrated.

In this respect authorities tend to agree that EU legislation on safety of passenger ships should not consider adopting rules aimed at obligatory training for crew members in crime scene investigations.

A similar opinion was expressed with respect to the possibility to adopt provisions for obligatory peepholes for passenger cabin doors, security latches and time sensitive key technology and other similar provisions to those adopted in US: one authority believes that such issues should be left to the cruise industry to regulate.

9.7.2 Comments from other stakeholders

Based on the comments received it seems that passenger ships encounter obstacles when providing transport services covering intra-European routes related to the applicability of different safety standards and to crew nationality: on this respect it has been argued that it could be worthwhile to consider at EU level introducing measures for crew technical, operational and safety standards and training.

However, in general stakeholders seem to agree that ships involved on international voyages (included intra-European ones) should comply with IMO rules, as a different approach (regional approach) would lead to confusion.

Some stakeholders seem to welcome the adoption in the EU of similar rules to those adopted in the United States by the Cruise Ship Security and Safety Act 2010 which provides for obligatory training for crew members in crime scene investigation and response and requires on board medical care should a crime be perpetrated.

Some other stakeholders would also welcome the adoption (for cruise ships in Sea Areas A and B) of provision for obligatory peepholes for passenger cabin doors, security latches and time sensitive key technology, or requiring installation of technology to detect when a passenger falls overboard and to keep logbooks detailing all deaths, missing persons, alleged crimes and passenger/crew member complaints regarding theft and sexual assault. However, it has been suggested that measures related to cabins in the above Act are excessive.

Finally, some stakeholders have commented that it would be more appropriate that such provision are discussed and adopted at IMO, or in any case that such issues should not be addressed by EU legislation.

9.8 Factual conclusions

Based on the comments received by maritime safety authorities and maritime stakeholders, but also on our analysis, we can conclude that there are safety issues which according to both authorities and stakeholders need to be addressed at EU level, and in particular they concern:

1. Small ships (meaning new ships that carry less than 12 passengers, existing ships which are less than 24 metres in length to which Directive 2009/45/EC does not apply, and new ships carrying more than 12 passengers but being less than 24 metres in length).
2. Ships made of material other than steel;
3. Historic ships and sailing ships.

For the above vessels it was indeed pointed out that there is a lack of harmonized rules and/or in any case international rules are not appropriate or excessive in the case of small ships, and ships made of material other than steel.

The lack or inappropriateness of international and EU wide safety standards applicable to such ships requires that any legislative initiative harmonizing the safety standards that are applicable to such vessels should also apply to those engaged on intra-European routes.

Indeed, the lack or inappropriateness of binding international standards applicable to some of the small ships, to ships made of material other than steel, sailing and historic ships (namely, IMO SOLAS) implies that currently such ships encounter trade related obstacles also within the EU, as it might occur that they enter the ports of some EU States that do not recognize safety certificates issued by their flag State.

The other possible safety gaps identified by the Contractor and concerning tenders for large passenger ships, ships carrying offshore workers, European registered cruises operating in polar areas, and ships engaged on intra-European routes have not been fully acknowledged by most of the authorities and stakeholders interviewed.

It has also been pointed out that rules for some of the above vessels are being addressed or should be addressed at IMO.

However, based on the research activity carried out it seems that the EU should carefully consider the possibility to undertake a legislative initiative aimed at least at setting some specific standards for ships carrying offshore workers and for large passenger ships tenders, and/or at making binding the standards that have been or will be developed within the IMO.

It seems instead premature to intervene with respect to ships operating in polar waters, as at international level a mandatory Code that will address issues related to the safety of navigation in polar waters is being developed. In this respect, in order to avoid duplication, it could be useful to wait until such a Code is adopted and to assess the opportunity to include it in EU legislation through the adoption of an EU Directive.

The EU should also consider to expand the scope of Directive 2009/45/EC to cover intra-European routes. As explained above, it is true that the need to cover such routes is more significant for ships that fall outside the scope of the IMO SOLAS Convention, and that in general a passenger ship engaged on an intra-European route carrying a SOLAS safety certificate should be able to provide transport services within the EU without encountering major obstacles.

However, the current legal framework seems to be not consistent with the objectives of the TFEU and of the internal market, aimed at removing borders between Member States and thus contributing to the free movement of individuals, goods and services.

Indeed, under the current framework, a ship operating in two ports of the same Member State and carrying a safety certificate issued pursuant to Directive 2009/45/EC will be obliged to obtain a SOLAS certificate if it intends to make a voyage between two ports of two different Member States, despite the fact that the second voyage might well be shorter than the first one.

The necessity to obtain two certificates for similar voyages represents a cost for operators, and to a certain extent might prevent the latter from deciding to operate between two Member States, because obtaining a SOLAS Certificate for a ship that on an usual basis makes short domestic voyages (ships of Class C and D) means complying with stricter SOLAS standards, conceived for ships engaged in long international voyages, which are not therefore always appropriate for short voyages¹¹³.

In turn this represents also an obstacle to the free circulation of passengers in the EU, because having less operators providing intra-EU transport services implies higher costs for such services, and a limited choice in term of the range of transport services offered.

However, the special features of the maritime transport sector, warrants a careful approach to the issue of ships engaged on intra-EU routes according to the Contractor. Indeed, an EU regime setting safety standards for ships engaged on intra-European routes would interfere with the international regime governed by the SOLAS Convention, as passenger ships carrying more than 12 passengers and engaged on international voyages, such as intra-EU voyages currently are, have to comply with the international standards laid down in the IMO SOLAS Convention.

If the EU were to extend the scope of Directive 2009/45/EC, all ships engaged on intra-EU routes would have to comply instead with European standards and carry the relevant certificates, while all ships engaged in voyages between an EU port and a third country one would be subject to SOLAS rules.

In addition, the decision of the EU to extend the scope of the Directive would have an impact on ships registered in third countries which should comply with EU

¹¹³ In addition ships may find themselves to have to comply with different rules when operating in different Member States because the latter as flag States may issue not only SOLAS certificates but also accompanying SOLAS exemption certificates for vessels that are not up to the SOLAS standards. Or some Member States may enter into bilateral agreements concerning vessels carrying out certain services. In this context the lack of an uniform EU legislative framework for vessels engaged on intra-EU routes implies for operators willing to operate in different Member States the necessity to ensure that its vessels comply with different sets of rules.

rules if engaged on intra-EU routes, and this might cause some tension with third States which accept in their ports EU flagged ships simply complying with SOLAS rules.

In this respect the decision to extend the scope of Directive 2009/45/EC could include a provision making both SOLAS Certificates and EU Certificates valid for intra-EU journeys.

In the light of the above, if it cannot be concluded, at this stage, that extending the scope of Directive 2009/45/EC to ships engaged on intra-European voyages is the optimum solution for the EU ship industry and for European passengers, it is posited in agreement that it could have positive effects.

10 COMPETENCES OF THE EU IN THE MARITIME SECTOR AND THE RELATIONSHIP BETWEEN EU LAW AND INTERNATIONAL LAW

10.1 Introduction

It is common ground that the EU does not enjoy an unlimited competence to adopt legislative measures in a certain field, but that it can intervene in so far as the TFEU requires it to do.

In this context, therefore, in order to identify the extent to which the EU can intervene in the maritime transport sector and possibly address the safety gaps identified in the previous Section, it might be useful to define the scope of EU competence in the maritime transport, and in particular in the area of safety.

In addition, as the maritime transport law is indeed an area of law where national and EU competences interfere and should be coordinated with international law, for the simple reason that maritime transport is by its very nature an international business, requiring where possible global rules, we will discuss also the relation between EU maritime law and international rules, in order to assess which, if any, limits stemming from international rules could limit EU action in the area of safety of passenger ships.

The maritime transport sector, indeed, in general, and the matter of safety in particular, are extensively regulated by international rules very often adopted within the context of the International Maritime Organization (IMO), the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships, such as:

- i. the 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹¹⁴, which lays down the jurisdiction of States to establish national rules and to give effect to those rules over foreign ships in each maritime zone.

¹¹⁴ UNCLOS is the most comprehensive attempt at creating a unified regime for governance of the rights of nations with respect to the world's oceans. The treaty addresses a number of topics including navigational rights, economic rights, pollution of the seas, conservation of marine life, scientific

- ii. the International Convention for the Safety of Life at Sea (SOLAS), which is an international maritime safety treaty. The first version of the treaty was passed in 1914. It prescribed numbers of lifeboats and other emergency equipment along with safety procedures, including continuous radio watches. Newer versions were adopted in 1929, 1948, 1960, and 1974. The primary purpose of SOLAS is to set down standards for the construction, equipment and operation of ships that will promote their seaworthiness. It requires flag States to ensure that ships under their flag comply with the requirements of the Convention, and to inspect and survey ships, and issue certificates of seaworthiness. In addition every ship when in port is subject to the control of port authorities, which verify that certificates issued are valid. Valid certificates have to be accepted unless there are grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the certificate. If there are such grounds, then the port State is to take steps to ensure that the ship does not sail until it can proceed to sea, or leave the port for the purpose of proceeding to a repair yard, without danger to the ship or its crew.
- iii. the 1966 International Convention on Load Lines, (LL 1966), which sets limits on the draught to which a ship may be loaded;
- iv. the 1977 Torremolinos International Convention for the Safety of Fishing Vessels (SFV 1977). Adopted at a conference held in Torremolinos, Spain, the 1977 Convention was the first-ever international Convention on the safety of fishing vessels. The safety of fishing vessels had been a matter of concern to IMO since the organization came into existence, but the great differences in design and operation between fishing vessels and other types of ships had always proved a major obstacle to their inclusion in the Convention on Safety of Life at Sea (SOLAS) and Load Lines. It contained safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24 metres in length and over, including those vessels also processing their catch. Existing vessels were covered only in respect of radio requirements;

exploration, piracy, and more. It is comprised of 320 articles and 9 annexes, representing the codification of customary international law and its progressive development.

- v. the 1993 Protocol to the 1977 Convention for the Safety of Fishing Vessels (SFV PROT 1993) (not yet in force). In the 1980s, it became clear that the Convention for the Safety of Fishing Vessels was unlikely to enter into force, and IMO decided to prepare a replacement in the form of a Protocol. Thus, in 1993 Protocol superseded the 1977 Convention. The 1993 Protocol was adopted in April 1993, and will enter into force one year after 15 States with at least an aggregate fleet of 14,000 vessels of 24 metres in length and over, have ratified the Protocol. It applies to fishing vessels of 24 metres in length and over including those vessels also processing their catch.

Against this background EU competence in the maritime field has developed at a gradual and fragmented pace. It has created a regulatory layer which exists between the national level of Member States' legislation and the international level composed by rules and standards adopted by the IMO.

This layer is directly applicable in the legal systems of Member States and has the effect of transferring external competence to the EU, pre-empting the right of Member States to undertake international commitments outside the EU institutions.

Having said that, this Section is therefore structured as follows:

- the first part provides an overview of the EU competences in the maritime transport sector;
- the second part provides an overview of the relationship between EU law and international rules applicable to the maritime transport sector with a view to assessing to what extent EU legislative measures imposing safety requirements do not conflict with international rules. As it is common ground that neither UNCLOS nor IMO conventions prevent flag states from imposing additional or more onerous requirements on their ships, the analysis will focus on the limits that derive from UNCLOS and, to a minor extent, IMO Conventions, to the power of coastal states to impose additional safety requirements and standards.
- The last part will draw conclusions, assessing the possible scope of EU intervention with respect to the safety gaps identified in the previous Sections and object of Part II of this Study.

10.2 Competences of the EU

Article 2 of the TFEU distinguishes between three types of competences and draws up a non-exhaustive list of the fields concerned in each case (Article 2):

- exclusive competence: where only the EU may legislate and adopt legally binding acts; the Member States are allowed to do so only if they are specifically empowered by the EU, or, of course, when they need to legislate for ensuring a proper implementation of EU acts;
- shared competence: where both the EU and Member States may legislate and adopt legally binding acts, but, when the EU has legislated, the Member States may exercise their competences only to the extent that the EU has not exercised its competence, or to the extent that the EU has decided to cease exercising its competence;
- supporting competence: where the EU may support, co-ordinate or supplement the actions of the Member States, but without being allowed to adopt legislative harmonization rules.

The TFEU lists the policy areas in which the EU has exclusive, shared and supporting competences (respectively Articles 3, 4 and 6 TFEU).

The exercise of the above competence is subject to three fundamental principles which appear in Article 5 of the TFEU.

- the principle of the attribution of powers (or of “conferred powers”): the Union has only the competences conferred upon it by the Treaties;
- the principle of proportionality: the exercise of EU competences may not exceed what is necessary to achieve the objectives of the Treaties;
- the principle of subsidiarity: for shared competences, the EU may intervene only if it is capable of acting more effectively than the Member States.

10.3 EU Competences in the maritime transport sector

Pursuant to Article 4 of the TFEU the competence of the EU in the transport sector is shared with the one of Member States.

Pursuant to Article 58 of the TFEU, freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport (Articles 90-100).

Article 90 states that the objectives of the Treaties shall, in matters governed by the Title relating to transport, be pursued within the framework of a common transport policy and Article 94 expressly provides that any measures taken within the framework of the Treaties in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 91 provides expressly that the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure¹¹⁵ and after consulting the

¹¹⁵ Pursuant to Article 294 (ex Article 251 TEC): “1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament’s position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament’s position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament:

(a) approves the Council’s position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

(b) rejects, by a majority of its component members, the Council’s position at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by a majority of its component members, amendments to the Council’s position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament’s amendments, the Council, acting by a qualified majority:

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

Economic and Social Committee and the Committee of the Regions, lay down *inter alia*:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate provisions.

Article 92 forbids Member States from adopting measures that discriminate carriers of other Member States as compared with carriers who are nationals of that State until the above provisions have been laid down. Similar provisions prohibiting discrimination are laid down in Articles 95-96.

Finally Article 100 expressly confers on the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, the power to lay down appropriate provisions for sea and air transport.

As to the external competence of the EU in the transport sector pursuant to Article 3, paragraph 2 of the TFEU the Union has exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Pursuant to Article 207, paragraph 5, the negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three of the TFEU and to Article 218, which lays down procedural rules.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council⁷.

The Treaty does not confer exclusive competence on the EU in connection with the negotiation and conclusion of international agreements in the field of transport (Article 4 of the TFEU).

Given that the TFEU expressly confers on the EU the power to conclude international agreements in the field of transport, this implies that EU competence concurs with the competence of the Member States in this area¹¹⁶.

With respect to maritime safety conventions, external competence of the EU is based on the TFEU, as pursuant to Article 207, paragraph 5, the negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three of the TFEU, and as explained above such Title expressly confers on the EU the power to adopt measures to improve transport safety¹¹⁷.

This also implies that pursuant to the case law of the Court of Justice Member States remain free to conclude international agreements in so far as their conclusion does not affect the achievements of the objectives of the legislative measures adopted by the EU in the transport sector, and in so far as the EU has not completely harmonized the rules governing the subject-matter of the international agreement to be concluded¹¹⁸.

¹¹⁶ EU competence to enter into international agreements in the transport sector has been recognised by the ECJ in the famous case *AETR* (Judgment of 31 March 1971, *Commission/Council*, Case C-22/70, ECR 1971, page 263); see also Opinion of the ECJ of 26 April 1977, 1/76, 1977, ECR 1977, page 741. As known the ECJ in this Judgment elaborated the so called “pre-emption doctrine”, implying that the Community’s external competence becomes exclusive as soon as common rules are adopted, and such exclusivity covers any situation in which external activities of Member States might affect Community law (see also Judgment of 5 November 2002, *Commission/United Kingdom*, Case C-466/98, ECR 2002, page I-9427; *Commission/Denmark*, Case C-467/98, ECR 2002, page I-9519; *Commission/Sweden*, Case C-468/98, ECR 2002, page I-9575; *Commission/Finland*, Case C-469/98, ECR 2002, page I-9627; *Commission/Belgium*, Case C-471/98; ECR 2002, page I-9681; *Commission/Luxembourg*, Case C-472/98, ECR 2002, page I-9741; *Commission/Austria*, Case C-475/98, ECR 2002, page I-9797; *Commission/Germany*, Case C-476/98, ECR 2002, page I-9855 (so called “Open Skies judgments”). See also Opinion of the ECJ of 7 February 2006, *Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, 1/03, ECR 2006, page I-01145.

¹¹⁷ Previously external competence of the EU with respect to maritime safety conventions was based on the implicit competence that followed from maritime transport being a Community policy, and on the extensive Community legislation in the field.

¹¹⁸ Judgment of the ECJ of 5 November 2002, *Commission/Denmark*, C-467/98, ECR 2002, page I-9519, paragraph 90-98; Judgment of the ECJ of 2 June 2005, *Commission/Luxembourg*, C-266/03, ECR 2005, page I-4805, paragraph 40-52. See R. BIEBER, F. MAIANI, M. DELALOYE, *Droit européen des transports*, Editions Helbing & Lichtenhahn/ Bruylant/ L.G.D.J., 2006, pages 42- 43.

When an international agreement concerns both matters for which the EU is competent and matters for which Member States are competent, it can be concluded by the EU and the Member States, so called mixed agreements¹¹⁹.

10.4 EU law and international law

EU maritime safety legislation normally targets all ships, without regard to the nationality of their flag States or operator¹²⁰. Some measures fix requirements for ships entering EU ports (port perspective), other measures fix requirements for ships that are only transiting through the coastal waters of the EU (coastal State perspective).

The legal foundation for the EU's regulation of foreign ships lies in their presence in the area within its jurisdiction and in particular in the jurisdiction of Member States

The European Community (now the EU) has, since 1998, been a Contracting Party to UNCLOS and has thereby assumed the same rights and obligations as State Parties in respect of matters within its competence, and therefore the possibility when imposing EU rules over foreign ships has to comply with these rules¹²¹.

As to the possibility to assess EU rules with respect to the UNCLOS Convention the European Court of Justice has expressly stated that this Convention does not establish rules intended to apply directly and immediately to individuals and to confer upon them rights or freedom capable of being relied upon against States¹²².

¹¹⁹ Opinion of the ECJ of 4 October 1979, 1/78, ECR 1979, page 2871.

¹²⁰ Such an approach could give rise to strains according to some authors in relation to international law, under which States and in particular flag States are only subject to obligations to which they have consented or which have a basis under customary international law (see H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 3).

¹²¹ Council Decision of 23 March 1998 n. 392, concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof, OJ L 179, 23 June 1998, pages 1–2.

¹²² Judgement of the ECJ of 3 June 2008, *Intertanko and others*, Case C-308/06, ECR 2008, page I-4057, paragraph 64.

It has been argued that there is nothing in the UNCLOS that prevents States having ratified it from imposing requirements on foreign ships entering their ports¹²³.

Some limits may stem from the application of general principles of international law, and in particular the principle of non discrimination, the principle of good faith and the prohibition of abuse of rights¹²⁴.

However, we note that EU legislation has imposed prescriptive requirements for foreign ships entering EU ports. Therefore we can conclude that EU measures adopting prescriptive requirements for foreign ships entering EU ports independent from the corresponding international rules would not give rise to particular concerns under international law (see for example the introduction requirements imposed by Directive 1999/35/EC)¹²⁵.

Conversely, EU participation in UNCLOS limits the EU's possibility to adopt prescriptive requirements for foreign ships simply passing through the coastal waters of Member States, as UNCLOS rules limiting coastal state prescriptive jurisdiction are clear¹²⁶, and national or EU standards relating to the design or equipment of ships

¹²³ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, pages 214-215.

¹²⁴ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, pages 224-225.

¹²⁵ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, pages 377-381.

¹²⁶ The State sovereignty over its territorial sea (12 nautical miles from the coast) is limited, as known by the doctrine of ships' right of innocent passage" in the territorial sea. The text of the relevant provisions of UNCLOS are reported below. Article 21 explicitly prevents coastal States from applying national laws and regulations to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

Article 17 Right of innocent passage

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18 Meaning of passage

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

passing through their coastal waters would conflict with the above rules. In this respect it can be added that no EU legislation has been adopted so far imposing the above requirements to ships simply passing through the coastal waters of Member States. Therefore the above conclusion is also in line also with international practice.

Article 19 Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of wilful and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(l) any other activity not having a direct bearing on passage.

Article 20

Submarines and other underwater vehicles

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21

Laws and regulations of the coastal State relating to innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic;

(b) the protection of navigational aids and facilities and other facilities or installations;

(c) the protection of cables and pipelines;

(d) the conservation of the living resources of the sea;

(e) the prevention of infringement of the fisheries laws and regulations of the coastal State;

(f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;

(g) marine scientific research and hydrographic surveys;

(h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

3. The coastal State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

As to IMO SOLAS rules, the EU does not formally participate in any IMO conventions and is not bound by obligations emanating from those conventions under international law. In most cases the EU has adopted legislation duplicating the international rules, in other cases it has adopted rules that exceed international rules and apply to ships bound to EU ports¹²⁷.

It is not within the scope of this study to discuss the complex issues related to relations between EU rules and SOLAS rules. However, for the purposes of this Study, it can be said that as the EU is not bound by IMO Conventions, the validity of EU legislation does not depend on its compatibility with them. It follows that in case of conflict between EU law and the IMO Conventions the latter would not prevail¹²⁸, while Member States' obligations under those conventions would either be governed by Article 351 of the TFEU as far as applicable, or by the principle of primacy of Community law (now EU law) over national law.

10.5 Conclusions

The previous analysis illustrates that the EU competence to adopt port measures, i.e. measures requiring vessels operating in EU ports to comply with certain safety standards is in general not limited by international rules.

With more specific regard to the issues under analysis, we remark that as far as some small ships, ships made of material other than steel, historic ships and sailing ships are concerned an EU intervention would in general not conflict with international

¹²⁷ For example Directive 1999/35/EC: it applies to regular ro-ro and high speed craft services to or from Community ports, and as part of the criteria for operating a regular service under the Directive, ships must comply with a number of conditions which are not based on IMO Conventions (regional rules on the carriage of voyage data recorders (VDRs)). See also Council Directive 1994/58/EC of 22 November 1994 on the minimum level of training of seafarers, OJ L 319, 12 December 1994, pages 28-58: the EU extended by this Directive the scope of the requirement beyond passenger ships (e.g. oil tankers). Another example is: Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, OJ L 208, 5 August 2002, pages 10-27; Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC, OJ L 191, 22 July 2005, pages 59-69.

¹²⁸ H RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, pages 138-139. See judgment of the ECJ of 3 June 2008, Intertanko and others, Case C-308/06, ECR 2008, page I-4057, paragraph 50-51.

rules, as these vessels are either inappropriately covered by or excluded from international rules.

Therefore, the Contractor does not see any obstacle to the adoption of EU safety standards that would apply to such ships when engaged on domestic and international voyages, provided that they depart from or are bound for EU ports.

Some reservations are to be made with respect to small ships carrying more than 12 passengers but being less than 24 metres (if existing ships) in length when engaged on international voyages: in this respect as they fall under the scope of SOLAS rules, it could be argued that as a matter of opportunity the *status quo* should not be altered.

An EU intervention would be legitimate with respect to tenders of large passenger ships, as there are no specific binding international rules for such vessels.

As to ships carrying offshore workers it could be argued that for those ships which are engaged in domestic waters and/or that carry less than 12 passengers there are no issues of compatibility with international rules, as no specific IMO SOLAS rules apply to such ships.

As to vessels carrying more than 12 workers which are engaged on international voyages, such ships should fall under the scope of IMO SOLAS rules: in this respect while we would suggest that the EU does not adopt rules that are in conflict with IMO SOLAS rules, we also note that as the EU is not part of the IMO SOLAS Convention. Therefore its competence to adopt specific rules with respect to such vessels, where it is concluded that the current rules are not appropriate, is not restrained by the existence of IMO SOLAS rules.

With respect to ships operating on polar waters, we note, first, that such ships are mainly engaged on international voyages and subject to IMO SOLAS rules. Secondly, we note that EU measures could only possibly refer to ships engaged in polar waters that are registered in the EU or that leave from EU ports or are bound to the ports of the few Member States that are located in the polar areas.

Finally, as far as passenger ships carrying more than 12 passengers and built in steel or equivalent material and engaged on intra-EU routes are concerned, it is posited in agreement that, although such vessels are in general subject to IMO SOLAS rules, there is no obligation stemming from international Treaties to which the EU is part that

prevents the latter from extending the scope of EU legislation (e.g. Directive 2009/45/EC) to ships engaged on intra-EU voyages.

11 DEFINITION AND EVALUATION OF LEGISLATIVE OPTIONS

11.1 Introduction

This Section aims at identifying and assessing possible options for an EU legislative intervention with respect to the safety gaps and related obstacles to the internal market identified in the previous Sections of this Study. As explained in paragraph 9.8, there is a general consensus among stakeholders and maritime authorities that the scope of EU safety legislation should be extended as to cover four specific typologies of ships: ships made of material other than steel, small ships¹²⁹, sailing ships and historic ships.

On the other hand, it has emerged that some measures would be necessary to address safety gaps or lack of clarity with respect to rules applicable to other ships, namely tenders for large passenger ships and ships carrying offshore workers.

The Study found also that the current legislative framework applicable to ships engaged on intra-EU routes cannot be considered as fully satisfactory. This perception is strong with respect to ships that do not fall within the scope of IMO SOLAS Convention (e.g. sailing vessels), while opinions are more ambiguous as far as passenger ships that are covered by such Convention are concerned.

In particular, we are convinced that EU legislation on ships not covered by the SOLAS Convention should necessarily apply to intra-European routes. On the other hand we believe that from a legal standpoint the fact that Directive 2009/45/EC only applies to ships engaged on domestic voyages is not consistent with the objectives of the TFEU, and that therefore the EU should seriously consider to extend the scope of the above Directive to ships engaged on intra-European routes.

Finally, with respect to ships operating in polar waters, we suggest that the EU might wait for the adoption of the Polar Code at the IMO, and then consider whether it

¹²⁹ For small ships, as explained already the issue is more complex.

would be appropriate to include such Code in the EU legislation, for example by means of the adoption of an EU Directive simply referring to such Code.

Based on these findings we will therefore identify and assess three possible legislative options concerning:

- ships made of material other than steel;
- small ships;
- sailing ships;
- historic ships.

The three legislative options under consideration are: mutual recognition, EU legislation establishing essential safety requirements, and EU legislation harmonizing Member States' legislation.

They will be considered with respect to existing and new ships, as we have remarked in the course of our Survey that to apply new harmonized standards to existing ships is perceived as a costly operation by the industry.

In this respect we are already in the position of anticipating that in general for existing ships a mutual recognition option would appear as the best option as it would contribute to the realization of the objectives of the internal market without imposing excessive costs to the industry.

In identifying possible options, we will assume that EU Member States are reluctant to adopt EU measures which only target ships flying the flags of Member States as these have the effect of providing a competitive advantage to ships operators in other parts of the world and to EU operators who have chosen to flag their ships in non-EU States or territories, therefore if the EU regulatory machine is to be employed it should be used in a way as to impose obligations on ships of all States, that is, by means of port and coastal measures¹³⁰.

However, as we have clarified in the previous Section that the adoption of coastal measures gives rise to concerns of international law that go beyond the scope of this Study, and as the EU has so far refrained from adopting coastal measures imposing

¹³⁰ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 8.

design, construction, manning or equipment on foreign ships, the scope of the analysis will be limited to possible port measures.

This Section is structured as follow:

- the first part provides a brief description of the possible legislative options;
- the second part provides a description and an identification of the possible options for EU legislative intervention in respect to the safety gaps and related obstacles to the internal market identified above as more urgent;
- the last part discusses some options for addressing the safety gaps and related obstacles to the internal market identified with respect to tenders for large passenger ships and to vessels carrying offshore workers.

11.2 Mutual recognition, legislation establishing essential requirements, harmonization

The mutual recognition principle guarantees free movement of goods and services without the need to harmonize Member States' national legislation¹³¹.

Goods which are lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced pursuant to technical or quality specifications different from those applied to its own products. The only exception allowed, that of overriding general interest such as health, consumer or environment protection, is subject to strict conditions.

The application of the principle of mutual recognition guarantees compliance with the principle of subsidiarity by avoiding the creation of detailed rules at EU level and by ensuring greater observance of local, regional and national traditions and makes it possible to maintain the diversity of products and services.

¹³¹ See the Communication from the Commission concerning the consequences of the judgment given by the Court of Justice on 20 February 1979 in case 120/78 (*Cassis de Dijon*), OJ C 256, 3 October 1980, pages 2-3.

Such principle is however not always automatically applicable: it can be affected by the right of the Member State of destination to verify the equivalence of the level of protection provided by the product under scrutiny, compared with the level of protection provided by its own national rules¹³².

Mutual recognition of safety standards means that if ships are allowed to operate in a Member State they would automatically receive an equal treatment in other Member States. Mutual recognition arguably provides flexibility from the viewpoint of shipowners¹³³.

In a European Union context, the term harmonization refers to the coordination of the legal and administrative regulations of the Member States to tackle anomalies in the internal market.

Harmonization can be limited to the adoption, by means of Directives based on the TFEU, of the essential safety requirements (or other requirements in the general interest) with which products put on the market must conform, and which should therefore enjoy free movement throughout the EU¹³⁴.

This approach has for example been followed by Directive 1994/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft¹³⁵. The above Directive provides that 'Recreational craft' shall meet the essential safety, health, environmental protection and consumer protection requirements set out in its Annex I and that Member States shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of

¹³² Commission interpretative communication on facilitating the access of products to the markets of other Member States: the practical application of mutual recognition, OJ C 265, 4 November 2003, pages 2-16.

¹³³ For an example of EU legislation imposing mutual recognition in the transport sector see Council Directive 1976/135/EEC of 20 January 1976 on reciprocal recognition of navigability licences for inland waterway vessels, OJ L 21, 29 January 1976, pages 10-12.

¹³⁴ Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards, O J C 136, 4 June 1985, pages 1-9.

¹³⁵ Directive 1994/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft, OJ L 164, 30 June 1994, pages 15-38. See also Directive 2009/142/EC of the European Parliament and of the Council of 30 November 2009 relating to appliances burning gaseous fuels, OJ L 330, 16 December 2009, pages 10-27; and Directive 1994/11/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to labelling of the materials used in the main components of footwear for sale to the consumer, OJ L 100, 1 April 1994, pages 37-41.

the recreational craft bearing the CE marking referred to in Annex IV, which indicates their conformity with all provisions of the Directive.

Such standards do not fix the exact way the craft should be built, but establish the criteria to follow in the designing of the parts of the crafts in order to avoid specified risks.

Finally, harmonization can be extensive imposing specific standards with which ships have to comply, as is the case of Directive 2009/45/EC.

Harmonization of safety standards has certain benefits, as it allows shipowners to provide transport services without having to comply with different regulations in each Member State, while ensuring a high level of safety.

11.3 Evaluation of possible scenarios

11.3.1 Ships made of material other than steel

As explained in the previous Section, despite a growing number of vessels is built using composite materials, safety standards for ships built in such material have not been harmonized at European level, and also IMO SOLAS rules are not specific for such ships.

It follows that such ships are subject mainly to a variety of national rules in the different Member States and this may therefore constitute an obstacle to the internal market.

In this context, as also expressed by maritime authorities interviewed, a no action solution is not an option, as the *status quo* neither ensures that an adequate level of safety is achieved in the European Union, nor guarantees a free circulation of vessels within the internal market or the freedom to provide transport services across the EU.

Therefore, in view of the internal market dimension of maritime passenger transport, action at EU level is the most effective way of establishing a common minimum level of safety for these ships through the EU.

11.3.1.1 Mutual recognition of national safety rules applicable to ships made of material other than steel: critical factors and associated risks

EU intervention with respect to ships made of material other than steel could be limited in scope and require Member States to recognize safety certificates issued by other Member States to non-metallic vessels, this implying that once a ship complies with the safety rules adopted by the flag State, it can afterward be engaged on domestic voyages or intra-European voyages in other Member States.

In the absence of IMO SOLAS specific rules on such vessels when engaged on domestic voyages, EU legislation could not impose on Member States an obligation to recognize safety certificates issued by other Member States on the basis of compliance with international standards but could merely impose on Member States to recognize certificates issued by other Member States on the basis of national legislation.

Such an option would have the advantage of granting flexibility, ensuring that ships can provide transport services within the EU, without having to comply with different safety rules.

However, it would give a competitive advantage to the ships registered in Member States with lower safety standards, which would be free to provide their services in the internal market, also in Member States where safety standards are higher than in their flag State. This could in turn have the effect of decreasing the level of safety of passenger ships in the EU.

Despite this last remark we believe that the mutual recognition option would be the best solution for existing ships made of material other than steel, as to apply new standards to existing ships would be an excessive cost for the industry. In this respect we have found in our Survey that much of the criticism expressed towards existing EU legislation referred to the fact that it has applied new standards to existing ships.

11.3.1.2 EU legislation setting essential requirements: critical factors and associated risks

A second legislative option for the EU would be to adopt a Directive setting essential safety requirements that Member States have to impose on ships made of material other than steel, without prescribing at European level specific technical standards.

This option would have the advantage of leaving Member States some flexibility in adopting standards that would be appropriate for ships registered in their country and operating in their ports and could ensure a high level of safety.

However, it would not exclude at all the possibility that Member States could require foreign ships to comply with standards adopted at national level, as Member States should be left the option to require compliance to specific safety standards when they find it necessary, in view of the specific features of the water under their jurisdictions.

In addition, as recognized by the European Commission itself elaborating on the essential requirements is a very difficult task, and experience shows that the essential requirements are not always perfect in their conception and expression, because creating concise and concrete descriptions of the legislator's objectives requires a deep knowledge of the sector and a distance from the traditional practice for drafting technical specifications in laws¹³⁶.

In addition, *“the additional feature requested from well-written essential requirements (i.e., to be uniformly and directly enforceable) presents the most difficulties, as they must enable direct assessment of the product conformity”*¹³⁷.

Finally, this option reduces but does not exclude the possibility that vessels registered in a Member State with the lowest standards, but still complying with the essential requirements imposed by the EU, would have a competitive advantage over ships registered in Member States with higher safety standards within the internal market.

¹³⁶ See European Commission, *Vademecum on European Standardisation*, 15 November 2003, available at: http://ec.europa.eu/enterprise/policies/european-standards/documents/vademecum/index_en.htm.

¹³⁷ See European Commission, *Vademecum on European Standardisation*, 15 November 2003, available at: http://ec.europa.eu/enterprise/policies/european-standards/documents/vademecum/index_en.htm.

11.3.1.3 Harmonization of safety requirements: critical factors and associated risks

A third option to address safety gaps and related obstacles to the internal market concerning ships made of material other than steel could be harmonizing safety standards applicable to such ships when engaged on domestic voyages, for example expanding the scope of Directive 2009/45/EC. To be effective such a legislation should apply to new ships made of material other than steel, engaged also on intra-European routes because, as explained above, ships made of material other than steel, are not covered in an appropriate way by IMO SOLAS Convention and therefore EU measures could achieve also the objective of promoting a high level of safety while removing existing barriers to free movement in the internal market only if they would apply also to vessels engaged on intra-EU voyages.

Such an approach would ensure a high level of safety and eliminate to a greater extent the existing obstacles to the internal market.

In addition EU law obligations come with the powerful enforcement apparatus of the EU and non compliance involves for Member States the risk of being brought before the Court of Justice by the Commission and even being obliged to pay lump-sum penalties in case of continuous non compliance¹³⁸.

Thus the adoption of standards at EU level has a concrete effect in terms of improving ships' safety, contrary to what in general happens with the adoption of safety standards at international level. Indeed, it is known that international standards do not necessarily have a concrete impact on the safety of ships, as compliance with IMO SOLAS Convention depends on each State's ability and determination to implement.

Furthermore, the adoption of specific legislation would enable the EU to take the lead and set an example to third countries in the area of safety, and to persuade them to adopt specific safety standards for ships made of material other than steel. Indeed as

¹³⁸ It has been remarked that “Action by the IMO is severely handicapped by the absence of adequate control mechanism governing the way the rules are applied through the world. As a result, IMO regulations are not applied everywhere with the same rigor. The evolution of maritime transport over the last few decades and, in particular, the emergence of “flags of convenience”, some of which fail to live up to their obligation under the international conventions, tends to aggravate this phenomenon”: see I. CHRISTODOULOU-VAROTSI, *Maritime safety law and policies of the European Union and the United States of America: antagonism or synergy?*, Berlin, Springer, 2009, page 63.

pointed out by many authors the EU experience suggests that the most effective way to achieve new global rules may be to start the regulatory process at the regional level¹³⁹.

However, an EU harmonizing proposal would encounter the criticism of industry, concerned by the fact that safety standards should be adopted within the IMO and not by the European legislator, fearing that the latter could lack the technical competences to adopt such standards. In this respect the maritime industry and also some authors¹⁴⁰ have asserted that the adoption of EU legislation setting safety standards may lead to regulatory solutions which are less elaborate and less justifiable from a technical point of view¹⁴¹.

It is also commonly argued that only worldwide rules can ensure effective and manageable results because ships through their movement, are subject to a variety of jurisdictions during each voyage. Therefore global regulation is also the only way of ensuring that the same rules apply everywhere and that a level playing field exists between operators¹⁴², and in general regional measures should be avoided in the maritime transport sector, as shipping should be regulated globally¹⁴³.

¹³⁹ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 12. The Author quotes also V. FRANK, *The European Community and Marine Environmental Protection in the International Law of the Sea: Implementing Global Obligations at the Regional Level*, Phd Thesis delivered at Utrecht University in 2006, page 231.

¹⁴⁰ H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 10.

¹⁴¹ See the Comments of the Union of Greek Shipowners (UGS), EU MARITIME POLICY REVIEW – COMMENTS BY UGS, available at <http://ec.europa.eu/maritimeaffairs/pdf/061.pdf> (Annex 1): “*The global character of shipping requires that safety and environment measures should be based on international rules, notably negotiated and adopted in IMO. Global rules ensure that all countries use effective, clear and knowledge based international rules which are the outcome of international consensus and, thus, are widely implemented and enforced. The alternative would be a plethora of differing national or regional rules resulting in administrative inefficiencies and market distortions, interfering with the smooth flow of international trade and creating impediments to investment. New legislation, if required, should follow the IMO process and be based on a cost benefit analysis and impact assessment. Also, the application of the precautionary principle should take into account the principle of proportionality. Initiatives for EU legislation in this field, mostly motivated by political considerations on the basis of which the EU is subsequently seeking amendments of existing international legislation (e.g. SOLAS and MARPOL Convention) should be avoided. Apart from the regional character of the EU measures, the whole process would undermine the role of IMO.*”

¹⁴² It is also argued that only global rules that set out maximum permissible levels of regulation can ensure that national safety or environmental rules will not be abused by port or coastal States who may wish to have their share of the shipping industry profits: H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 10.

¹⁴³ See the Comments of the Union of Greek Shipowners (UGS), EU MARITIME POLICY REVIEW – COMMENTS BY UGS, available at <http://ec.europa.eu/maritimeaffairs/pdf/061.pdf> (Annex

In this context it is feared that the adoption of unilateral measures, applicable also to ships flagged in third countries could have as an effect that also third countries will adopt unilateral measures in this respect and that therefore ships complying with EU standards would have to comply also with the standards of third countries when bound to the ports of such States¹⁴⁴¹⁴⁵.

That said, we believe that harmonization of safety requirements for new ships made of material other than steel would be the best solution, because it would ensure a high level of safety promoting a further integration of the EU maritime transport sector.

In addition, such an intervention, due to the peculiarity of the legal framework applicable to ships made of material other than steel, notably the fact that there are no appropriate international standards designed for such ships, could be a first step towards the adoption of appropriate safety standards for ships made of material other than steel at international level.

11.3.2 Small ships and sailing ships

As seen above stakeholders and maritime authorities assert that the current standards for ships below 24 metres are excessive. In turn lack of harmonized safety

1): “UNCLOS represents a delicate balance of rights between flag states and coastal states. Any attempt to alter this balance, permitting the introduction of measures, by individual Member States or by the EU, within the Exclusive Economic Zones would be unacceptable for both reasons of principle and practicality. Such measures may interfere with rights to freedom of navigation that have been enshrined in maritime law for decades. Different regional safety and environment regimes would be unworkable for shipping and also detrimental to safety and the environment”.

¹⁴⁴ On the other hand is also challenged that all maritime safety rules are best regulated at international level, as global solutions might not be the optimal solution with respect to any kind of regulation in all circumstances, as some issues might be of purely local concern, and their solutions might be better sought at national or regional level: H. RINGBOM, *The EU Maritime Safety Policy and International Law*, Martinus Nijhoff Publishers, 2008, page 1.

¹⁴⁵ The EU as the US have in different contexts adopted or are in the process of adopting maritime safety instruments which depart from the international legal regime or shape the international requirements on the criteria of national or regional interests. As underlined by outstanding authors it has been remarked the emergence of unilateralism in maritime safety law with reference to the general trend of the laws and policies of the EU and US. I. CHRISTODOULOU-VAROTSI, *Maritime safety law and policies of the European Union and the United States of America: antagonism or synergy?*, Springer, 2009, Abstract.

standards for new ships that carry less than 12 passengers, or for existing ships below 24 metres is an obstacle to the internal market.

Similar concerns have been expressed for sailing vessels.

In particular, it has been argued that the standards of Directive 2009/45/EC as well as SOLAS standards are not appropriate for small ships, and that the Directive should apply to ships of 24 metres in length or to ships of above 45-50 metres, and that for ships below such thresholds specific standards should be applied.

In addition based on the comments received, it seems that the lack of harmonized standards for ships that carry less than 12 passengers, or existing ships of less than 24 metres and for sailing ships does create an obstacle to the internal market. Therefore we believe that with respect to small ships and sailing ships a no action solution is not an option for the EU, as the *status quo* neither ensures that an adequate level of safety is achieved in the EU for small ships and sailing ships, nor guarantees a free circulation of such vessels within the internal market and freedom to provide transport services across the EU.

We also believe that with the occasion of setting specific standards for small ships not subject to Directive 2009/45/EC, the EU could consider adopting specific standards for those small ships currently subject to the Directive, but in relation to which it has been suggested that different and less strict standards would be more appropriate.

11.3.2.1 Mutual recognition of national safety rules applicable to small ships and sailing ships: critical factors and associated risks

As seen with ships made of material other than steel, EU intervention with respect to small ships and sailing vessels could be limited in scope and require Member States to recognize safety certificates issued by other Member States, this implying that once a ship complies with the safety rules adopted by the flag State, it can afterward be engaged on domestic voyages in other Member States.

In the absence of IMO SOLAS specific rules on passenger ships carrying less than 12 passengers and on sailing ships, EU legislation could not impose on Member States an obligation to recognize safety certificates issued by other Member States on

the basis of compliance with international standards but could merely impose on Member States to recognize certificates issued by other Member states on the basis of national legislation.

Such an option, as explained in the previous paragraph concerning ships made of material other than steel, would have the advantage of granting flexibility, ensuring that ships can be engaged on domestic voyages in all Member States, without having to comply with different safety rules.

However, it would not ensure a high level of safety since it would give a competitive advantage to the ships registered in Member States with lower safety standards, which would be free to provide their services in the internal market.

However, for the same reasons explained in the paragraph concerning ships made of material other than steel, we believe this option would be appropriate for existing small ships and sailing ships.

11.3.2.2 EU legislation setting essential requirements: critical factors and associated risks

A second legislative option for the EU would be to adopt a Directive setting essential safety requirements that Member States have to impose on small ships and sailing ships, without prescribing at European level specific technical standards.

This option as explained above would have the advantage of leaving to Member States some flexibility in adopting standards that would be appropriate for ships registered in their country and operating in their ports and could ensure a high level of safety.

However, for the reason explained in the previous paragraph concerning ships made of material other than steel, it would not eliminate all the obstacles to the internal market deriving from the applicability of different safety standards within the EU and would reduce but not exclude the possibility that vessels registered in a Member State with the lowest standards, but still complying with the essential requirements imposed by the EU, would have a competitive advantage over ships registered in Member States with higher safety standards within the internal market.

11.3.2.1 Harmonization of safety requirements: critical factors and associated risks

A third option to address safety gaps and related obstacles to the internal market concerning new small ships and new sailing ships could be harmonizing safety standards applicable to such ships when engaged on domestic voyages, for example expanding the scope of Directive 2009/45/EC, or adopting a specific Directive for sailing vessels as suggested by one maritime safety authority.

Such an approach would ensure a high level of safety and eliminate to a greater extent the existing obstacles to the internal market. To be effective such a legislation should apply to small ships and sailing ships engaged on intra-European routes because, as explained above, EU measures could achieve also the objective of removing existing barriers to free movement in the internal market only if they would allow a small ship or a sailing vessel to undertake intra-EU voyages without having to comply with different sets of rules applicable in different Member States.

As already explained in the previous paragraph concerning ships made of material other than steel, European measures setting safety standards would encounter the critics of industry, persuaded that safety standards should be adopted within the IMO.

That said, we believe that harmonization of safety requirements for new small ships and sailing ships would be the best legislative solution as it would ensure a high level of safety in an integrated internal market, and as the lack or the inappropriateness of international standards for such ships currently hampers the possibility to freely transport passengers from a port of a State to the one of another, and an EU intervention would not significantly¹⁴⁶ alter the international regulatory framework applicable to such ships.

¹⁴⁶ Small ships are indeed subject to SOLAS Convention but we do not believe that applying EU rules to such ships when engaged on intra-EU routes could be problematic, and in any case the advantages for the EU industry of having a uniform set of rules applying to all small ships would be more relevant than the risks associated with such option.

11.3.3 Historic ships

As explained above there is not a definition of traditional (or historical) ships in Directive 2009/45/EC or in the IMO SOLAS rules, and no harmonized safety standards are provided neither at international nor at EU level. However, they are still in function and they are often used to transport passengers within national or international waters, thus encountering various obstacles related to the existence of different legislations.

From all of the above, it follows that also with respect to historic ships a no action solution at EU level is not an option, as the *status quo* neither ensures that an adequate level of safety is achieved in the European Union, nor guarantees a free circulation of vessels within the internal market or the freedom to provide transport services across the EU.

In addition, we also believe that adopting harmonized safety standards at EU level is not an option for such vessels, as it is recognized that due to the huge variety of traditional ships it would be extremely complex to elaborate appropriate standards.

11.3.3.1 Mutual recognition of national safety rules applicable to historic ships: critical factors and associated risks

EU intervention with respect to historic ships could be limited in scope and require Member States to recognize certificates issued by other Member States certifying that a ship is considered as an historic ship in the Member State where it is registered and that it complies with national requirements. In order to avoid abuses by Member States which could be too liberal in recognizing historical value to ships that might have not such a value, EU legislation could provide a definition of what can be qualified as historic ship.

Mutual recognition would have the advantage of avoiding to impose to old ships standards that are in general conceived for new passenger ships, and would make it not necessary to design standards valid for the huge variety of all traditional ships.

As already pointed out in the previous paragraphs legislation imposing mutual recognition of certificates recognizing the historic value of ships and exempting them from Directive 2009/45/EC could not ensure a high level of safety.

In addition, it could be difficult to elaborate a definition of historic ship that would eliminate the risk that Member States abuse the provisions of such legislation recognising a traditional value to passenger ships that have no such value.

However, despite all of the above the Contractor's view is still that mutual recognition would be the only appropriate solution for such vessels as it would strike a balance between the need to ensure free trade in the EU and the need to preserve the maritime tradition of all Member States.

11.3.3.2 EU legislation setting essential requirements: critical factors and associated risks

A second legislative option for the EU would be to adopt a Directive setting essential safety requirements that Member States have to adopt for historic ships, and adopting a definition of historic ship that would prevent abuses of this notion.

This option would have the advantage of leaving to Member States some flexibility in adopting standards that would be appropriate for ships registered in their country and could ensure a high level of safety.

However, it could be difficult from a technical point of view to elaborate essential requirements for historic ships due to their huge variety.

11.4 Other issues for which the possibility to adopt EU measures should be further assessed

11.4.1 Tenders for large passenger ships

As explained in Section 8 in practice tenders are approved as SOLAS lifeboats/life rafts, and are subject to the LSA Code.

Discussions are on-going that those not certified as lifeboats should comply with SOLAS II-1 (that is SOLAS rules on construction, structure and stability), and the IMO is working on Guidelines on safety provisions applicable to tenders operating from passenger ships, but they will be applicable to tenders on passenger ships carrying no more than 150 persons from ships to shore and back.

In turn, at national level we found that that no specific provisions have been adopted in the four Member States analysed with respect to this typology of vessels.

The brief description before shows that there is a lack of clarity on which rules should apply to such ships, and that the solutions adopted so far are far from being comprehensive and satisfactory.

In this context, in the absence of satisfactory international standards an EU legislative intervention for tenders of large passenger ships could for example be limited in scope and address specific issues such as fire protection systems for machinery spaces and radiocommunication systems.

The above intervention could for example require Member States to authorize a ship complying with the LSA Code or the above IMO Guidelines (when they will be adopted) to operate as a tender if it also complies with the SOLAS Convention (Chapter II-1), and to the requirements of Chapter II-2 of the above Convention (Fire protection, fire detection and fire extinction).

On the contrary, we do not believe a mutual recognition option could be useful for new tenders, as it seems that also at national level the Member States analysed have not addressed issues related to the safety of tenders in a specific way.

Instead, mutual recognition could be useful for existing tenders, because such an option would allow the free circulation of tenders in the EU, without imposing new standards on such vessels, thus avoiding to impose an excessive burden on the industry.

11.4.2 Vessels carrying offshore workers

The concerns expressed above concerning tenders also apply for vessels carrying offshore workers: in the absence of specific international standards there is a need for clarification and guidance with respect to issues of classification of vessels in the offshore industry as they cannot be easily classified under existing codes.

This circumstance will in turn give rise soon to obstacles to the internal markets, as it cannot be excluded that in the future such vessels will be involved in intra-European voyages, and as EU legislation does not currently cover intra-European routes, Member States might require foreign flagged vessels to comply with standards adopted at national level which might in turn be different from the ones adopted by the flag State of the vessel.

In the light of above it can be suggested that for new and existing vessels carrying up to 12 passengers the EU could adopt a legislative measure making binding the OSV Guidelines (Guidelines for the Design and Construction of Offshore Supply Vessels, 2006).

For new vessels carrying offshore workers, EU legislation addressing new ships could for example identify the SOLAS Convention standards with which ships registered to carry industrial personnel (as for example offshore workers) should comply: in this respect it could refer to the standards for passenger ships where necessary and to those for cargo ships where the latter would be more appropriate. Finally it could identify which provisions of other specific international Codes such as the SPS Code should also be applicable to such vessels.

For existing vessels, instead, the EU could consider a mutual recognition option, requiring Member States to simply recognize certificates issued by other Member States allowing a ship to carry industrial personnel.

Such measures, given the necessity to eliminate barriers to intra-EU trade should apply also to vessels engaged on intra-EU routes.

11.5 Conclusions

This Study has demonstrated that there are safety issues which need to be addressed at EU level, and in particular they concern:

- Small ships (meaning new ships that carry less than 12 passengers, existing ships which are less than 24 metres in length to which Directive 2009/45/EC does not apply and new ships carrying more than 12 passengers but being less than 24 meters in length);
- Ships made of material other than steel;
- Historic ships and sailing ships;
- Tenders for large passenger ships;
- Ships carrying offshore workers.

In addressing the above safety gaps and related obstacles to the internal market we suggest that the EU should consider adopting different measures for existing ships and new ships.

Indeed in the course of our Survey we found that most of the criticism expressed by both maritime safety authorities and maritime stakeholders towards existing EU legislation on the safety of passenger ships concerned the fact that Directive 2009/45/EC applies also to ships that were built before its adoption.

That said we believe that for historic ships an EU intervention should impose the mutual recognition of safety certificates issued in each Member State.

We also believe that a mutual recognition option would be appropriate for existing: small ships, ships made of material other than steel, sailing ships, tenders of large passenger ships, ships carrying offshore workers.

Instead for new: small ships, ships made of material other than steel, and sailing ships we suggest that the EU adopts a Directive imposing harmonized standards.

For new tenders of large passenger ships and for new vessels carrying offshore workers, we suggest that the EU adopts measures making binding international standards: in this respect we believe that an EU measure should identify in the SOLAS Convention and in the specific international Codes and guidelines the appropriate standards for such vessels.

Finally, it is posited in agreement that the EU should also consider expanding the scope of Directive 2009/45/EC to cover intra-European routes as the current legal framework seems to be not consistent with the objectives of the TFEU and of the

internal market, aimed at removing borders between Member States and thus contributing to the free movement of services and goods.

According to the Contractor it could be worth extending the scope of the Directive to intra-EU routes, thus allowing EU operators carrying a certificate issued under the Directive to operate freely in the EU.

On the other hand it could be worth exploring the possibility to include in the Directive a provision that would explicitly allow ships certified under SOLAS and thus authorized to make international voyages to also make intra-EU voyages.

Finally, we suggest that the EU should consider intervening with respect to ships operating in polar waters once the international Code for ships engaged in such waters will be adopted, i.e. the Polar Code, possibly incorporating it in an EU Directive, in order to ensure an effective enforcement of such Code in the EU.

BIBLIOGRAPHY

I. CHRISTODOULOU-VAROTSI, Maritime safety law and policies of the European Union and the United States of America: antagonism or synergy?, Berlin, Springer, 2009.

A.J. CORRES, Some thought on the Strategic Role of Coastlines, presentation held at The Marseille Maritime 2008 forum, available at: http://www.mareforum.com/Marseille_Maritime_2008_presentations.htm.

H. DEGGIM, International Requirements for Ships Operating in Polar Waters, Meeting of experts on the management of ship-borne tourism in the Antarctic Treaty Area, Wellington, New Zealand, 9 to 11 December 2009, available at: <http://ebookbrowse.com/international-requirements-for-ships-operating-in-polar-waters-h-deggim-pdf-d37174822>.

T. HERTZBERG, LASS, Lightweight Construction Applications at Sea, available at: www.lass.nu/Reports/LASS-SP_Report_2009_13.pdf.

Ø. JENSEN, Fridtjof Nansen Institute(FNI) Report The IMO Guidelines for Ships Operating in Arctic Ice-covered Waters – From voluntary to Mandatory Tool for Navigation Safety and Environmental Protection?, 2007, page 19, available at: <http://www.fni.no/doc&pdf/FNI-R0207.pdf>.

C. KUO, Safety Management and its Maritime Application, The Nautical Institute, 2007.

M. A. NESTEROWICZ, European Union Legal Measures in Response to the Oil Pollution of the Sea, 19 TIL. MAR. L.J. 29, 2004.

H. RINGBOM, The EU Maritime Safety Policy and International Law, Martinus Nijhoff Publishers, 2008, pages 214-215.

E. VANEM, R. SKJONG, “Collision and Grounding of Passenger Ships – Risk Assessment and Emergency Evacuations”, DNV.

D. L. WILLIAMS, A dictionary of passenger ship disasters, Ian Allan Hershman, 2009.

Studies/Reports:

J.P. BALTSERSEN, H. ERICHSEN, Presentation of Probabilistic Damage Stability regulations, New SPS Code and MARPOL Regulation 12A, Senior Surveyor, Naval Architect,

<http://www.skibstekniskelskab.dk/public/dokumenter/Skibsteknisk/Download%20materiale/2007/5%20nov%2007/Den%205%20nov%20jens%20Peter%20&%20Henrik%20E.pdf>.

M.L. BARNETT, D.I., GATFIELD & C.H. PEKCAN, Non-technical skills: the vital ingredient in world maritime technology? In: Proceedings of the International Conference on World Maritime Technology, London, 2006: Institute of Marine Engineering, Science and Technology, <http://www.solent.ac.uk/mhfr/papers.aspx>.

M.L. BARNETT, D.I., GATFIELD & C.H. PEKCAN, The Janus Principle in Maritime Safety: Looking Backwards to Look Forward. In: Proceedings of the Learning from Marine Incidents 3 Conference. London, 2006, The Royal Institution of Naval Architects, <http://www.solent.ac.uk/mhfr/papers.aspx>.

COUNCIL OF EUROPE, Recommendation 1486 (2000), Maritime and fluvial cultural heritage, of the Parliamentary Assembly of the Council of Europe, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EREC1486.htm>.

EMSA, Workshop Report, Ro-Ro Passenger Ships Fitted With Long Lower Holds, Lisbon, 27 March 2007, available at: https://extranet.emsa.europa.eu/index.php?option=com_joomdoc&task=doc_download&gid=496&Itemid=100005.

EUROPEAN COMMISSION - Evaluation of the Common Transport Policy (CTP) of the EU from 2000 to 2008 and analysis of the evolution and structure of the European transport sector in the context of the long-term.

EUROPEAN COMMISSION - COMMISSION STAFF WORKING DOCUMENT, For the Council Shipping Working party, <http://www.uni-mannheim.de/edz/pdf/sek/2008/sek-2008-0235-en.pdf>

EUROPEAN MARITIME HERITAGE (EMH), Response to EU Green Paper “Toward a future Maritime Policy for the Union: A European vision for the oceans and seas”, 29 June 2007.

R. HERBERT-BURNS, W. S. G BATEMAN, P. LEHR, (2009) Lloyd’s MIU handbook of maritime security, edited by Rupert Herbert-Burns, Sam Bateman, Peter Lehr.

H. HOPPE “IMO’s work on goal-based new ship construction standards”, speech given in EMSA technical meeting, 26 October 2004.

THE INTERNATIONAL COUNCIL OF CRUISE LINES, Large Passenger Vessel Safety Study, Report on the Analysis of Safety Influences, <http://www2.cruising.org/industry/lpvsafetystudy01.pdf>.

A. JASIONOWSKI, “Survival Criteria For Large Passenger Ships”, SAFENVSHIP Project, September 2005, Final Report, Safety at Sea Ltd.

S. KRÜGER, H. DANKOWSKI, On The Evaluation Of The Safety Level Of The Stockholm Agreement, http://www.ssi.tu-harburg.de/doc/webseiten_dokumente/ssi/veroeffentlichungen/IMDC09_KruegerDankowski.pdf.

MARITIME SAFETY COMMITTEE – 82nd session: 29 November - 8 December 2006, New passenger ship safety standards set for adoption at IMO’s Maritime Safety

Committee,

http://www.helcom.fi/press_office/news_baltic/en_GB/BalticAndEUnews16559/

M. PAWLOWSKI, “Subdivision and damage stability of ships”, Euro-MTEC series, Technical University of Gdansk, 2004.

SLF 52 Agenda Item 11, “Damage Stability Regulations for Ro-Ro Passenger Ships”, http://www.rina.org.uk/c2/uploads/round%20%20discussion%20paper%20%20_%20questionnaire%20final.pdf.

TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES, Ship Safety Issues Involving Elderly or Disabled Passengers, <https://trb.metapress.com/content/9727515x2p5gw836/resource-secured/?target=fulltext.pdf>.

UNION OF GREEK SHIPOWNERS (UGS), EU Maritime Policy Review – Comments by UGS, available at <http://ec.europa.eu/maritimeaffairs/pdf/061.pdf>.

E. VANEM, R. SKJONG, Designing for safety in passenger ships utilizing advanced evacuation analyses, A risk based approach, DNV Research Det Norske Veritas, <http://202.114.89.60/resource/pdf/1812.pdf>.

D. VASSALOS, A. JASIONOWSKI, L. GUARIN, Safety of Passenger Ships, Last revised: May 4, 2006 (Updated Large Passenger Ship Safety), Proceedings of the 8th International Ship Stability Workshop, Istanbul, October 2005, Passenger Ship Safety – Science Paving the Way, http://www.safety-at-sea.co.uk/pdf/2005_Passenger_Ship_Safety.pdf.

ANNEXES

- I. Annex 1 Comments of the Union of Greek Shipowners (UGS).
- II. Annex 2 Draft Report to the Maritime Safety Committee.
- III. Annex 3 Guidelines for passenger ship tenders.
- IV. Annex 4 Safety Provisions applicable to tenders operating from passenger ships, Comments relating to the Guidelines for passenger ship tenders.