

**EUROPEAN COMMISSION RECOMMENDATIONS  
ON SIMPLIFICATION OF EU PASSENGER SHIP SAFETY LEGISLATION (REFIT)**

**INDUSTRY COMMENTS**  
(Final\_14.03.2016)

Following the European Commission stakeholder workshop held in Brussels on 2 February 2016, the European Community Shipowners Associations (ECSCA) and European Boating Industry (EBI) wish to share these preliminary comments on the proposed recommendations to the simplification legislative proposal on the EU passenger ship safety legislation.

**Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community**

Electronic reporting - Passenger registration data

The Reporting Formalities Directive together with the VTMIS Directive are currently under evaluation by the EU Commission to identify possible ways of further reducing administrative burden and to design harmonized IT standards. The shipping industry asks the Commission to take into account, and to postpone any changes in the reporting scheme for passenger data until the Single Window system has been either modified, or stabilized. This will avoid repeated changes in the reporting requirements over time, which would have a detrimental organisational and economic impact on ship's operators.

The Single Window *may* provide a suitable gateway for transmission of passenger data collected pursuant to Directive 98/41 to national authorities. Nonetheless, the crucial consideration is that the information is available to the authorities who respond to an incident. This response will necessarily be local to the incident, and it may therefore be the case that local reporting arrangements are more appropriate than national (or EU) ones. The Directive should permit the national authorities who are responsible for responding to an incident to specify the arrangements that best fulfil their operational requirement for the data.

As for transmission of passenger registration data (which may or may not be their Single Window) national Authorities should be free to specify whether they require such data to be transmitted to them for every voyage or whether they prefer instead to have immediate access only when an incident occurs. The data will be used only when an incident occurs, and such an occurrence is exceptional. National authorities should be free to decide not to be sent data when they do not need it; and this would, of course, at the same time avoid the imposition of a redundant administrative burden on operators.

Similarly, some operators operating on seasonal schedule on vessels below 300GT may experience some difficulties to register in advance. In that case, it is recommended to remain with local recordings.

In addition, specific attention should be paid to maintaining the flexibility of boarding operations: in order to allow last-minute passengers to board, recording should be allowed up to and including actual departure, not until departure.

It is worth recalling that the registration regime in Directive 98/41 is different from the reporting regimes covered by the National Single Window. The purpose of those other reporting regimes is to provide information to national authorities to enable them to decide whether to act (e.g. whether to inspect a ship) or not. The purpose of the data registered under Directive 98/41, by contrast, is to assist national authorities when they have already decided to act. Different arrangements for the two regimes may be entirely appropriate, and not represent "double reporting".

#### Nationality data – Passenger registration data

The shipping industry would query the proposal to require passengers to declare their nationality (and to require ferry and cruise operators to record it) for maritime safety purposes. It is not clear how information about passengers' nationality will assist a search and rescue operation, nor in the recovery of casualties after an incident. Search and rescue authorities will surely treat all passengers and crew equally, regardless of their nationality; and, as nationality is not associated with any bodily characteristics, it cannot assist in the identification of casualties. It is important that maritime safety registration regimes are not misused for other purposes, such as immigration control.

Some cruise lines and ferry operators do already record their passengers' nationality, as well as various other data besides, for the purposes of customer service, marketing, and (in some instances) compliance with immigration requirements. The fact that they do so does not make the information relevant to search and rescue or to other safety operations. Directive 98/41 is concerned solely with maritime safety.

#### **Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services**

The shipping industry suggests to remove the notion of 'unscheduled' surveys from Annex IV and replacing it by a requirement that such surveys shall be occasionally carried out in an unannounced manner. Furthermore, there is a need to clarify that the ships subject to this Directive are ships exclusively engaged on international voyages and national class A voyages.

Another concern is related to the definition of scheduled service between two ports. According to this directive, a ship that changes its national scheduled service between two other national ports is now subject to repeat all the inspections required under the Directive. This is an undoubtedly case of overlapping of inspections. We suggest, for ship engaged on national voyages to change the definition in "scheduled service between ports inside a national sea area as identified by the Member State".

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

##### 1. Aligning requirements with aluminium

Whilst the large majority of Member States certify ships made of aluminium equivalent to steel and consequently within the scope of Directive 2009/45/EU, the shipping industry is concerned about the Commission's clarification on aluminium built ships equivalent to steel-built ships; of particular concern relates to the fire insulation requirements according to SOLAS, which are found impracticable for small ships above 24m.

For instance, the evacuation time on vessels up to 35m in length is only several minutes, i.e. much shorter than for larger ships. The shipping industry believes that the fire insulation requirements need to be in line with the evacuation time. Low risk areas are identified for instance as the deck over compartment without risks to set on fire or the staircases between decks. It is therefore recommended to limit the fire insulation A30/60 to the areas with a risk of fire, such as the engine rooms and other high fire risk areas.

Higher insulation requirements combined with steel crowns as required by the Directive will increase the vessel's weight to the extent that aluminium will no longer offer the weight improvement qualities compared to steel vessels. The weight increase in the upper structure of the vessel will also modify the ship's stability, opening new areas of concern for shipbuilding. Looking at ship operations, the weight increase will result in increased fuel consumption and increased engine emissions.

Moreover, the insulation of shipside or windows in passenger lounges in way of the life rafts as required by the Directive is deemed unnecessary. If a fire happens in the muster station (or assembly station), the evacuation would not be possible regardless of shipside and window insulation.

From a general prospective, the fact that exclusively aluminium-built ships should have equivalent standards as steel ships is questionable. Indeed, the EMSA study (Annexes 1 and 2 to COM(2015) 508 final) seems to indicate that those aluminium ships are already safer than wood or FRP ships. In this respect, the Commission should consider the necessity to develop an EU non-steel or non-aluminium craft operational code to regulate the passenger service of this kind of ships for the sake of both safety and fair commercial competition.

## 2. Proposed phase-in period for existing aluminium fleet

The shipping industry considers it is not economically and technically feasible to modify existing aluminium vessels in order to bring them in compliance with the proposed equivalency rules; in this respect the EMSA study seems to have underestimated the retrofit costs of those ships to have them complying with Directive 2009/45/EU. There is a clear risk that shipowners and operators will shift their orders to vessels built in other materials, such as FRP – fibre reinforced plastic and wood, and/or to aluminium vessels below 24m with increased number of passengers on board. This would in addition create a significant loss for European shipyards specialized in building aluminium passenger vessels whereas the REFIT is supposed to simplify "existing regulatory provision without changing their substance", it is not the case for those aluminium ships.

## 3. Scope starting at 24m in length

The shipping industry considers that smaller passenger vessels from 15m up to 35m in length or 300GT or 250 passengers should be treated in a differentiated way with regard to larger passenger ships, ferries and RO-PAX vessels.

Requirements deemed prescriptive for vessels below 24m are equally prescriptive and difficult to implement on vessels between 24 and 35m. By proposing to exclude vessels below 24m from the Directive's scope, the shipping industry questions the risk that the EU legislation would artificially create a gap in safety requirements applied below and above 24m, possibly resulting in shipowners and operators shifting orders to smaller vessels (up to 24m) with an increased number of passengers taken on board, and an increased air pollution due to the increase of propulsion power needed.

Furthermore the justification that there is no internal market for ships below 24m so they are best regulated at national level can be questioned. Experience in the recreational craft sector showed that harmonising safety and environmental requirements was key to the development of the internal market for such vessels.

#### 4. Sea areas definitions

It is suggested that the Directive would not apply to ships sailing in areas other than sea areas, as defined by the Member States. The shipping industry proposes to clarify that the ships engaged in voyages inside the baseline as defined by the 1982 Montego Bay Convention (i.e. internal waters and sheltered waters) should be applied.

In addition, a clear exemption regime under this directive should be established for ships operating inside base line.

#### 5. New drafting of the Annex I requirements

The shipping industry supports that the Annex I needs to be updated and aligned on the current international conventions.

In light of the concerns expressed about prescriptive requirements for smaller passenger vessels (range up to 35m or 300 GT or 250 passengers – to be defined), the shipping industry believes there would be a clear gain for the EU legislation to develop an Annex I.a. for this range of vessels built in aluminium or steel.

#### 6. Granted exemptions

Looking at the high number of exemptions granted for short range navigation (classes C and D), the shipping industry wonders whether the current requirements are adapted to that type of navigation. All justifications remind the fact that class C and D ships are operated in favourable weather conditions, with good visibility and daylight, in sheltered areas, usually on short voyages and with rescue facility readily available.

### **Development of an EU Small Craft Operational Code**

The shipping industry supports this approach for vessels below 24m and wishes to participate in the future work to be carried out at EU level.

### **Related general comment on the ID-control requirement in Sweden**

Sweden has enlarged the implementation of Directive 98/41/EU to in addition also check the identification against the passenger list "if there is a risk that there might be persons onboard travelling under false identity".

This regulation applies to passengers ships on international voyage to Sweden on journey longer than 20 nm.

On 4 January 2016, the new legislation entered in to force in Sweden which says that 100% of the passengers should be ID-checked before entering the Swedish border. The legislation imposes a strict liability for the ship's operators.

Of concern is that operators are required to provide services that must normally be performed by the national authorities such as boarder control police, coastguard and customs which trained for.

Such requirements entail competition issues between modes of transport. For example, the new Swedish legislation has major implications especially for transport operators in the Öresund region. The Öresund bridge, operated by the Öresund Consortium, is a fixed rail-road link across the Öresund, the strait that separates Denmark and the southern region of Sweden. The shipping companies operates ferries between Helsingborg and Helsingör, across the northern part of Öresund. The two parties are direct competitors on the market for transporting cars, lorries and buses across the Öresund. With regard to passengers in cars and lorries travelling to Sweden by ferry the, the ferry liners are responsible for carrying out the controls. However, the legislation does NOT impose a comparable requirement on operators of fixed links such as the Öresunds Bridge.

14.03.2016

The European Community Shipowners' Associations (ECSA), formed in 1965, comprises the national shipowners' associations of the EU and Norway. ECSA aims at promoting the interests of European shipping so that industry can best serve European and international trade and commerce in a competitive and free business environment, to the benefit of both shippers and consumers. The European Economic Area maintains its very prominent position with a controlled fleet of 40% of the global commercial fleet.

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The European Boating Industry represents the interests of the European leisure marine industry and its members. The membership of the European Boating Industry encompasses all sectors relating to boating and water sports, including the design and construction of small passenger vessels.

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