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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission under Directive 2009/45/EC on safety rules and standards for passenger ships, Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and Directive (EU) 2017/2110/EU on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC

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1. Directive 2009/45/EC on safety rules and standards for passenger ships (Directive 2009/45) [1]

1.1. Introduction

Directive 2009/45/EC was amended in 2017 by Directive (EU) 2017/2108 [2]. Article 10(3) of Directive 2009/45 as amended confers on the Commission the power to adopt delegated acts subject to the conditions laid down in Article 10a. The power to adopt delegated acts is conferred for a period of seven years from 20 December 2017. The first period of seven years will end on 20 December 2024.

The delegated acts for which the Commission is empowered may concern:

- Amendments of Directive 2009/45, in order to take account of developments at international level, in particular within the International Maritime Organisation (IMO), of the following:
  - the definitions of 'International Conventions', 'Intact Stability Code', High Speed Craft Code', 'GMDSS' and 'recognised organisation',
  - the provisions relating to procedures and guidelines for the surveys referred to in Article 12 the flag State is required to carry out,
  - the provisions concerning the SOLAS Convention3, as amended, and the High-Speed Craft Code,
  - some specific references to the International Conventions and IMO resolutions.
- Amendments to the Annexes to Directive 2009/45 in order to:
  - apply, for the purpose of Directive 2009/45, amendments made to the International Conventions;
  - adjust, in the light of experience, the technical specifications found in the amendments made to International Conventions for ships of classes B, C and D and craft,
  - simplify and clarify technical elements, in the light of experience gained from their implementation;
  - update the references to other Union instruments applicable to domestic passenger ships.

1.2. Legal basis

In accordance with 10a(2) of Directive 2009/45, the Commission must draw up a report on the delegation of power not later than nine months before the end of the seven-year period. The delegation of power is to be tacitly extended for periods of

[1] OJ L 163, 25.6.2009, p. 1–140

[2] Directive (EU) 2017/2108 of the European Parliament and of the Council of 15 November 2017 amending Directive 2009/45/EC on safety rules and standards for passenger ships, OJ L 315, 30.11.2017, p. 40–51

[3] International Convention for the Safety of Life at Sea (SOLAS), 1974

an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

1.3. Exercise of delegation

The Commission has exercised the power to adopt delegated acts conferred on it by Directive 2009/45/EC only once during the reporting period.

The adopted act is Commission Delegated Regulation (EU) 2020/411 of 19 November 2019 amending Directive 2009/45/EC of the European Parliament and the Council on safety rules and standards for passenger ships, as regards the safety requirements for passenger ships engaged on domestic voyages[4].

The Delegated Regulation 2020/411 replaced Annexes I, II and III to Directive 2009/45/EC by amended versions. The justifications for the amendment of the annexes were the following:

- The International Conventions referred to in Directive 2009/45/EC had been amended. Moreover, a detailed review of technical elements in the Annexes showed that some earlier amendments of International Conventions had been omitted.
- The definition of 'equivalent material' in Directive 2009/45 had been amended by Directive 2017/2108[5] to include aluminium ships within its scope. To ensure harmonised implementation, it was necessary to add technical clarifications in the Annexes with regard to aluminium ships.
- Directive (EU) 2017/2108 had excluded passenger ships measuring less than 24 metres in length from the scope of Directive 2009/45, so the technical requirements for those ships had to be deleted from Annex I.
- Experience had revealed several ambiguities and inconsistencies in the technical requirements related to missing or incorrect references.
- Pursuing simplification, while updating some of the requirements, Annex I was restructured into two sections.

1.4. Conclusions

The Commission has effectively and proportionally exercised its power to adopt delegated acts as per Directive 2009/45.

Considering the continuous evolution of the international technical requirements applicable to passenger ships, which constitute the basis for the requirements defined under EU law for domestic passenger ships, it is very likely that the Commission will need to use its empowerment in the near future.

[4] OJ L 83, 19.3.2020, p. 1–236

[5] Directive (EU) 2017/2108 of the European Parliament and of the Council of 15 November 2017 amending Directive 2009/45/EC on safety rules and standards for passenger ships (Text with EEA relevance) OJ L 315, 30.11.2017, p. 40–51

In view of these considerations, the Commission considers the delegation of power conferred in Article 10(3) of Directive 2009/45 should be tacitly extended for a period of seven years, in accordance with Article 10a(2).

The Commission invites the European Parliament and the Council to take note of this report.

2. Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (Directive 98/41) [6]

2.1. Introduction

Directive 98/41 was amended in 2017 by Directive (EU) 2017/2109[7]. Article 12 of Directive 98/41 as amended confers on the Commision the power to adopt delegated acts in order not to apply, for the purposes of this Directive, an amendment to the international instruments referred to in Article 2 of Directive 98/41, i.e. the SOLAS Convention and the Internation Safety Management Code. The power to adopt delegated acts is conferred for a period of seven years from 20 December 2017. The first period of seven years will end on 20 December 2024.

The delegation of power may be used only in exceptional circumstances, where duly justified by an appropriate analysis by the Commission, in order to avoid a serious and unacceptable threat to maritime safety or incompatibility with Union maritime legislation.

2.2. Legal basis

In accordance with 12a(2) of Directive 98/41, the Commission must draw up a report on the delegation of power not later than nine months before the end of the seven-year period. The delegation of power is to be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

2.3. Exercise of delegation

The Commission has not exerciced the power to adopt delegated acts conferred on it by the Directive 98/41/EC.

2.4. Conclusions

The Commission believes that, although to date it has not exercised the delegation of power conferred upon it by Article 12 of Directive 98/41, the delegation should be tacitly extended a period of seven years, in accordance with Article 12a(2).

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[6] OJ L 188, 2.7.1998, p. 35–39

[7] Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017 amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States, OJ L 315, 30.11.2017, p. 52–60

The international instruments referred to in Article 2 are constantly evolving and it cannot be excluded that, under exceptional circumstances as referred to in Article 12, the Commission is required to adopt delegated acts.

The Commission invites the European Parliament and the Council to take note of this report.

3. Directive (EU) 2017/2110 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (Directive 2017/2110)[8]

3.1. Introduction

Article 12 of Directive 2017/2110 confers on on the Commision the power to adopt delegated acts for a period of seven years from 20 December 2017. The first period of seven years will end on 20 December 2024.

The delegation of power may be used:

- amend the Annexes to Directive 2017/2110 in order to take account of developments at international level, in particular within the IMO, and to improve the technical specifications thereof in the light of experience gained
- in exceptional circumstances amend Directive 2017/2110 in order not to apply for the purpose of this Directive an amendment to the international instruments, provided the amendment is justified in order to avoid a serious and unacceptable threat to maritime safety, to health, to shipboard living or working conditions or to the marine environment, or to avoid incompatibility with Union maritime legislation.

3.2. Legal basis

In accordance with Article 13(2) of Directive 2017/2110, the Commission must draw up a report on the delegation of power not later than nine months before the end of the seven-year period. The delegation of power is to be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3.3. Exercise of delegation

The Commission has not exerciced the power to adopt delegated acts conferred on it by Directive (EU) 2017/2110.

3.4. Conclusions

The Commission believes that, although to date it has not exercised the delegation of power conferred upon it Article 12 of Directive 2017/2110, this delegation should be tacitly extended for a period of seven years, in accordance with Article 13(2).

[8] OJ L 315, 30.11.2017, p. 61–77

The Commission invites the European Parliament and the Council to take note of this report.