Subject: Passenger ship expert working group – summary outcome of meeting

1. Introduction

Following the welcome, and approval of the agenda, the chair (Ms. C. Berg, Head of Maritime Safety Unit, DG MOVE) briefly presented the actions to be taken in the following months as a follow-up to the REFIT fitness check on EU passenger ship safety legislation. The intention is to finalise the legal proposals for the simplification of the PSS legislation as soon as possible, in order for the negotiations to begin still under the NL presidency. Afterwards, stakeholders will be invited to express their interest in participating in the Passenger Ship Safety Expert Working Group as observers. The first joint meeting of the expert group with observers is foreseen to take place after summer (September/October 2016).

The Chair recalled that the main objectives of the meeting was to: (1) present the results of the questionnaire on the simplification of the EU passenger ship safety legislation; (2) prepare the proposals for the EU passenger ship safety legislation (with focus on key measures highlighted in the previous point); and (3) discuss next steps.

2. Results of the questionnaire on the simplification of the EU passenger ship safety legislation

The Chair underlined that the timely submission of the replies and comments was highly appreciated and that there had been a good response both in terms of the number of the administrations that had replied and in terms of the comments received. Regarding the statistics presented (i.e. how many Member States agreed, disagreed or expressed no opinion on a given proposal), it was highlighted that the results were automatically generated by the system, at face value (i.e. conditional replies not taken into account, no weighting, etc.).

3. Preparation of the forthcoming proposals for the EU passenger ship safety legislation

The Chair recalled that the main aim of the meeting was to get further insights in some of the issues raised by Member States in the questionnaire and to discuss alternative wordings proposed. It was however not intended to start negotiating on the envisaged measures. Following issues were discussed in more detail:
A. 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

Some Member States questioned using National Single Window (NSW) as the (only) tool to communicate the number of persons on board to the system accessible to search and rescue authorities. The Chair recalled the obligation for all Member States to have the NSW operating already since June 2015. Notwithstanding the delays in its implementation, by the time the proposed amendments will enter into force (possibly 2019/2020), the system will be fully operational.

The discussion then focused on using Automatic Identification System as an alternative tool for communicating the number of persons on board, as proposed by one Member State during the consultation and as noted in the REFIT fitness check conclusions. The advantage of this option would be a minimal investment with significant safety benefits. Higher transparency on the availability of the number of persons on board was considered to be an important side benefit. Moreover, an internet connection is not needed and passenger vessels already have an obligation to carry an AIS device on board irrespective of their size (unless Member States have used the possibility to exempt them from such obligation).

From the technical perspective, it was clarified that there is a space for the number of persons on board in the AIS message. Experts then exchanged experience with already using AIS for such purposes, the prime example cited by the UK being very short voyages of a few minutes on the River Thames.

A number of experts supported the proposal and welcomed having an alternative to the NSW, which is especially important for small operators. Comments were made concerning the functioning of AIS as a pre-programmed device and the fact that old devices may need to be upgraded for such purpose. The accuracy and reliability of the information provided by the master was also questioned, however, albeit in this respect there would be no change compared to status quo.

Some experts also highlighted the fact that Member States have a possibility to grant exemption from the obligation to carry AIS to passenger ships of under 300 GT (Annex II/I-2 of Directive 2002/59/EC). These Member States would need to revisit and justify their decision accordingly unless exemptions are in one way or another retained. However, on the basis of experience with using AIS for this purpose (as a widely accessible and non-expensive tool), it was questioned whether such exemptions remain justified.

Finally, in response to several comments regarding the scope of the Directive’s applications (e.g. fjords or archipelago), the Chair recalled ancillary clarifications and the fact that the inner limit of sea area D remains within the discretion of Member States to define.

B. 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 Chair underlined that the aim is to simplify the current requirements and to adjust the inspection regime according to the implementation experience. Specific questions were addressed to experts, namely regarding the possibility for joint inspections and carrying out 'in service' inspections at sea.
Some experts highlighted that while they in principle agree with the simplification approach, more discussion would be needed on the more detailed, operational aspects of putting the suggested amendments into place and there were calls for a dedicated workshop to be organised with the experts concerned (inspectors, surveyors). This would allow achieving a common interpretation of the provisions. The Chair underlined that such a workshop could be organised with the assistance of EMSA once the simplification proposals are finalised and put forward by the Commission (as part of the implementation plan and the preparation of the necessary implementing acts).

Germany made an information point and informed the Commission that while at the time of submitting the replies to the targeted questionnaire they were not yet able to respond to questions related to Directive 1999/35/EC, they support the proposed measures. More specifically, Germany supports removing the notion of 'unscheduled' inspections from the Title of Annex IV without any replacement.

Finally, experts underlined the difference between Directives 2009/45/EC and 1999/35/EC and consequently the need for an independent inspection under Directive 2009/45/EC, due to the fact that it may be delegated to recognised organisations. In such cases coordination with the recognised organisations would be required.

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

EMSA presented the planning for simplifying the Annex (in view of its adoption as soon as the amended Directive enters into force). The Chair reminded experts that during the last meeting of the Committee (COSS), there was an agreement on the amendment of the existing Annex, which is currently under the 3 month scrutiny period and will enter in force in 2018. The discussion followed on the timing of the proposed changes and the fact that the simplified Annex should in principle be put forward in the form of a Regulation to reduce the transposition burden for national administrations. In addition, transitional period would be foreseen. Several issues were discussed in detail:

a) Sea areas simplification

All experts agreed that the reference to 'where shipwrecked persons can land' should be removed from the definition of sea areas C and D. Regarding the distance to a place of refuge, where this criterion is used experts called for retaining it. It was noted that the notion of place of refuge should be reflected on a case-by-case basis for each ship when the operational/navigation elements are decided upon. A more general discussion took place on the other criteria such as the significant wave height (not included in the simplification proposals) where divergent opinions have been expressed on its use and added value.

b) Specific ship types

On the proposal to clarify the definition of traditional ships, some experts emphasised the importance of clarifying the definition. Moreover, regarding sailing vessels, a preference towards their exclusion emerged during the meeting. Clarification was asked regarding the pleasure craft definition and divergent views expressed towards excluding tenders from the scope of the Directive.

Regarding aluminium vessels, the issue was addressed by some of the experts and references were made to the replies provided in the questionnaire. The Chair recalled that the current
safety level cannot be comprised, a transitional period should be provided and the technical requirements clarified, taking the consultation feedback as a starting point.

c) Other issues

Another issue of safety concern was raised with respect to the current wording of the Directive that may be ambiguous when cargo ships are converted into passenger vessels (and should therefore fulfil the requirements for a "new" passenger vessel). In addition, the attention of the Commission was drawn to a possibly incorrect wording in the Annex concerning lifesaving appliances.

5. Next steps

The Chair summarised and presented the next steps. Once the simplification proposals are finalised and adopted by the Commission, the work on the new format of Annex to Directive 2009/45/EC will start immediately (including via a correspondence group) and a dedicated workshop will be organised by EMSA. Furthermore, the PSS Expert Group will be enlarged to observers (a call for the expression of interest should be launched still this spring so the next meeting of the PSS Expert Group planned after summer can already take place in the enlarged setting).

In the second phase of the REFIT fitness check follow-up and as announced in the Commission report (COM(2015)508), preparatory work will start on developing guidelines or a code for small vessels, based on functional requirements. Finally, depending on the results of the negotiation at international level concerning the damage stability requirements, a study will be launched to support the review of Directive 2003/25/EC.

6. AOB

On the question regarding the form of the legislative proposals, i.e whether all revised Directives will be amended in one text or separately, the Chair replied that no final decision has been taken in that respect, however, the intention is to avoid having one single amending proposal, because this would lead to a massive technical text that would be impossible to handle and would not be in line with the principles of clear legal drafting.

Finally, a request was addressed to the Commission whether all individual replies to the targeted questionnaire can be distributed among the PSS Expert Group. The Chair underlined that comments provided by the participants of the questionnaire will be reflected in the Staff Working Document accompanying the simplification proposals and recalled the specific privacy statement for the targeted consultation, according to which it was not envisaged to publish the received contributions on the internet in their entirety. Member States could opt for their contribution to be referred in an anonymous form.