

EMH Fahrenheitstr. 11 D- 28359 Bremen

Parlement Européen
Mrs Daniela Aiuto, MEP
Mr. Flavio Facioni
Bât. Winston Churchill
M03110
1, avenue du Président Robert Schuman
CS 91024
F-67070 Strasbourg Cedex

European Maritime Heritage
Safety Council
Dijkweg 222
NL-1619 Andijk
www. European-maritime-heritage.org

Chairman:
Thomas Hoppe
Fahrenheitstr. 11
DE-28359 Bremen
th@thomashoppe.eu
mobile: +49-152-34548687

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Revision of Dir 2009/45 – Definition of historical ships and sailing vessels

Dear Mrs Aiuto, dear Mr Facioni,

Thank you for the constructive meeting last week. You asked us to further explain the situation of traditional vessels in Europe and how they will be affected by the current proposals regarding the amendment of the Passenger Ship Directive (Dir 2009/45).

Traditional ships that transport more than 12 passengers are a common occurrence in Europe. We estimate their number above 1000 ships, all complying with national safety regulations. In Germany alone, 150 ships are involved. There is an overlap between the two ship categories 'sailing vessels' and 'traditional vessels'.

Technical justification for exempting traditional ships and sailing ships

Most of these historic ships cannot comply with the very detailed modern safety rules for actual passenger vessels (f. ex.: fire protection on a wooden boat). The different national systems of certification of traditional vessels deal very successfully with this situation by implementing other equivalent measures to achieve the same level of safety like on a modern passenger vessel (f. ex. fireguards, limitations to the number of people on board, limited area of operation, special training etc.). As the Directive 2009/45 does not foresee in such alternative measures of safety, the exemption of these ships from the scope is crucial.

Sailing vessels from a safety perspective need to be addressed separately with requirements for rigging, stability under sail and other requirements not mentioned in the Passenger Ship Directive.

Textual and legal arguments for using the definition for a traditional ship as used in DR 2002/59

1. It is common understanding that traditional vessels are excluded from the Directive but the current definitions and the new definition as proposed by the Commission is unclear. According to the latest proposal of the EU-Commission and from the Council, only vessels that were passenger vessels before 1965 would qualify for an exemption as traditional vessel. This is neither appropriate nor does it fit into the existing legal definitions of traditional vessels on the European level.
2. A fixed threshold of 1965 seems to be inappropriate. Today, there are many ships that would easily and undoubtedly qualify as historical ships that were built *after* 1965. And if we think 5 or 10 years on, a ship must be more than 60 years old to qualify as historical, which according to all experts would exclude many historically valuable ships in the future. (A flexible threshold like for example for historical cars (30 years in many countries) would make more sense.)
3. The need for ships to qualify as 'historical' only if they have been passenger vessels before 1965 does not mirror the existing fleet, which mainly composes of former tug-boats, cargo-vessels, Ice-breakers etc. None of these were built or formerly operated as passenger vessels. All these undoubtedly historical ships have operated safely as traditional passenger vessels for years and would be excluded from certification as a traditional vessel in the future.
4. The Commission has expressed the wish *"to simplify and streamline the existing EU passenger ship safety regulatory framework, in order to [...] ensure their correct implementation; and eliminate potential overlap of obligations and inconsistencies between related pieces of legislation"*.

There are currently two definitions in two different (but related) Directives (see table below).

As we argued above the definition of DR 2002/59/ec is to be preferred.

With its proposal for yet another definition the Commission does not streamline but further complicates matters. And the above mentioned historical ice breaker is still not exempted.

Current text 2009/45/ec art2.a.(v)	Definition in 2002/59/ec Art 3 (q)	EC's proposed amendment art 2. (j) (zc)
<p><i>This Directive does not apply to: [.] (v) original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials [.]</i></p>	<p><i>'traditional ships' means 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;</i></p>	<p><i>'traditional ship' means any kind of historical passenger ship designed before 1965 and their replicas built predominantly with the original materials, 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;</i></p>

5. The important “Memorandum of Understanding 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, MOU” (signed in 2005 by the Governments of Denmark, Estonia, Finland, Germany, The Netherlands, Norway, Spain, Sweden, The United Kingdom and later joined by Lithuania) also makes use of 2002/59/ec definition. It is widely recognized and is also promoted by the ICMM (International Congress of Maritime Museums) and European Maritime Heritage and agreed upon by the European Commission.

About Sailing Vessels

As for sailing vessels, we could agree with both proposed definitions, which, as we understand it, all allow engines for emergency and auxiliary purposes in sailing ships. Whether they additionally need to be “primarily” propelled by sails or not does in our view not make a difference. Better even would be to use the definition of a sailing vessel as used in DR 2006/87 (inland water passenger ships): “*a vessel built and fitted out also with a view to propulsion under sail*”.

We would like to thank you very much for your strong support in this crucial matter. If you need any further information, please do not hesitate to contact us.

Yours sincerely

Thomas Hoppe
(Chairman)

Paul van Ommen
(Vice-Chairman)

Attachments:

MOU (full text, the definition on page 5)

Memorandum of Understanding
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

The Maritime Authorities of

Denmark
Estonia
Finland
Germany
The Netherlands
Norway
Spain
Sweden
the United Kingdom

hereinafter referred to as "the Authorities" –

(1) noting that during the past few decades an increasing public interest in keeping historically valuable ships alive has led to a range of activities in the field of maritime heritage aiming at the preservation of such ships in active use, usually for private, social or cultural purposes but also as a commercial venture;

(2) noting further that the variety of types of vessels developed under different influences of geography, culture and economy ranges from primarily sailing vessels with an auxiliary engine to power-driven vessels, many of them with steam propulsion, former fishing boats and cargo vessels as well as coastal passenger traditional ships, tugs, icebreakers, light vessels and others. Many of them are preserved, having been well maintained in public service. Figures available indicate that around 5,000 sea-going ships of historical interest and regional character have survived until now in Europe. An overwhelming majority of them have proved to be safe and seaworthy when properly maintained, equipped and operated by experienced crews;

(3) noting also that, in several countries in Northern and Western Europe, Governments have adopted standards for traditional ships with different approaches concerning the standards applicable to the construction and equipment as well as the

safe operation and the certification of crews for such ships, which causes problems during port state control;

(4) noting with appreciation the progress achieved in this field by the Common European Maritime Heritage Congress (CEMHC);

(5) recognizing that the preservation of historically valuable ships in their traditional condition and their operation as a common living maritime heritage is of public interest;

(6) stating that a possible lack of modern technology on traditional ships should be compensated for by operational measures to provide an equivalent level of safety without destroying the historical character of the ships;

(7) recognizing the need to have special minimum standards different from regulations governing commercial ships, which will enable the traditional ships to comply with a level of safety that is equivalent to the safety level of modern ships subject to generally accepted international conventions, regulations, procedures and practices as well as to national law and, as far as traditional ships flying a flag of a Member State of the European Union are concerned, to binding provisions based on the EC Treaty such as Directive 98/18/EC, as amended;

(8) recognizing also that where IMO Conventions are applicable to all ships, for instance with respect to environmental issues, traditional ships have to comply with these regulations and therefore the subject will not be dealt with in this Memorandum;

(9) recognizing further, that a traditional ship as such should be used to promote traditional skills, seamanship and awareness of the maritime heritage; not to be engaged in transport on a profit base beyond the costs of operation and maintenance.

(10) convinced of the necessity, for these purposes, of mutual recognition of national certificates for the safe operation of traditional ships in European waters and of certificates of competency of crews on such traditional ships on the basis of a minimum standard adopted by the Common European Maritime Heritage Congress (CEMHC) as well as of national safety certificates for traditional ships concerning construction, equipment and radio requirements;

(11) convinced further that minimum safety standards for traditional ships would enhance the safety and the unhindered navigation and strengthen the co-operation and exchange of information among owners of such ships and the Authorities -

have reached the following understanding:

Section 1 - Compliance

- 1.1 Each Authority is prepared to comply with the guidelines provided for by the present Memorandum.
- 1.2 Each Authority confirms that a Document of Compliance shall be issued in the format listed in Annex I. The Document of Compliance confirms that the ship complies with the requirements of its national legislation for the operation of traditional ships flying the flag of the state of that Authority and meet the guidelines provided for by the present Memorandum and its Annex II.

Each Authority is willing to recognize

- The Document of Compliance for ships classed as Traditional Ships;
- national certificates of competency of crews of traditional ships under the flag of a state whose Authority is a signatory to this Memorandum, when calling at a port or participating in races, parades and festivals in its waters, provided that the certificates for safety, the safe operation and the competency of crews are issued under the guidelines of the present Memorandum and its Annex II thereto as guidance to minimum standards subject to the amendment procedure in section 3.3 and to the generally

accepted international conventions, regulations, procedures and practices as well as to national law and, as far as traditional ships flying the flag of a Member State of the European Union are concerned, to binding provisions based on the EC Treaty such as Directive 98/18/EC.

- 1.3 The Authorities might carry out port state control inspections, which would consist in a visit on board a traditional ship in order to check whether the ship has valid certificates as referred to in section 1.2 above. Furthermore, the Authorities might satisfy themselves that the crew and the overall condition of the traditional ship including the engine room meets the generally accepted minimum standards reproduced in Annex II hereto.

In the absence of valid certificates, or if there are clear grounds for believing that the condition of a traditional ship or of its equipment or its crew does not substantially meet the requirements of the Annexes hereto, the flag state would be informed.

In the case of deficiencies which are clearly and immediately hazardous to safety, health or the environment, the Authority would ensure, except as provided for in section 1.4 below, that the hazard is removed before the traditional ship is allowed to proceed to sea. For this purpose, appropriate action would be taken, which might include detention or formal prohibition of a traditional ship to continue operating on grounds of established deficiencies which, individually or together, would render the continued operation hazardous.

- 1.4 Where deficiencies which have caused a detention as referred to in section 1.3 above cannot be rectified in the port of inspection, the Authority might allow the traditional ship concerned to proceed to the nearest appropriate repair yard available as chosen by the master and the Authority, provided that the conditions determined by the competent authority of the flag state and agreed by the Authority are complied with. Such conditions would be aimed to ensure that the traditional ship can proceed without risk to the safety

and health of the crew or risk to other ships or without being an unreasonable threat of harm to the marine environment.

- 1.5 In the case of a detention, the Authority would immediately notify the flag state Administration in writing, which includes the report of inspection.

Section 2 - Definition

For the purposes of the present Memorandum of Understanding, “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 Document of Compliance in the format listed in Annex I.

Section 3 - Committee

- 3.1 A committee should be established, which should be composed of a representative of each of the participating Authorities. In addition, this committee should include designated representatives of the Common European Maritime Heritage Congress (CEMHC) as observer.
- 3.2 The committee should meet on a regular basis and at such other times as it may decide under the chairmanship of an Authority, which should hand over the chairmanship to another Authority at the next meeting.
- 3.3 The committee should
 1. promote the unhindered navigation of traditional ships and resolve any major problems which might arise from port state control;
 2. develop and review procedures for the exchange of information;

3. keep under review the present Memorandum, the Annexes thereto and other matters relating to the operation of traditional ships and the effectiveness of the Memorandum, for instance the legal status of persons on board, i.e. passengers, trainees etc;
4. decide on the application for membership by other interested Maritime Authorities;
5. take full account of the specialist advice available from the EMH representatives in the committee.

Section 4

- 4.1 The present Memorandum is without prejudice to rights and obligations under any international convention or agreement.
- 4.2 A Maritime Authority of a European coastal state or of a coastal state of the North Atlantic Basin from North America to Europe, which complies with the standards reproduced at the Annexes hereto, might sign to the present Memorandum of Understanding with the consent of all Authorities which are already signatories to this Memorandum.
- 4.3 Termination
A signatory might terminate his participation in the present arrangement by announcing this intention to the other signatories 90 days in advance.

Section 5 - Amendments

- 5.1 The MoU may be amended at a Committee meeting.
- 5.2 Each member state or observer organisation may propose amendments to the MoU. The member states shall agree on amendments by consensus.

- 5.3 Amendments that have been agreed upon at a committee meeting should come into force three months after the closure of the meeting unless prior to that date one or more member states have communicated their objection to the member state having the chair.
- 5.4 The whole MoU text, including the amendments, should be reproduced when a new version comes into force. The amended parts of the revised version should be indicated in the margin.
- 5.5 If there is a need for a prompt change of the MoU between two committee meetings, this can be done by circulating the proposed amendments for acceptance by all member states. The member state hosting the latest meeting should be responsible for circulating such amendments. Providing that there is consensus between the member states the revised MoU enters into force on the date indicated in the circulated amendments.

Section 6 – Prior Agreement

The present Memorandum of Understanding signed in _____ on the Two Thousand And Five replaces and abrogates the Memorandum of Understanding 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 originally signed in Wilhelmshaven on the eighth day of September Two Thousand.

Section 7 - Entry into force

This Memorandum of Understanding shall enter into force on the date of signature thereof.