



Brussels, 16 June 2017
(OR. en)

10276/17

LIMITE

MAR 129
CODEC 1044

**Interinstitutional File:
2016/0172 (COD)**

REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9719/17 MAR 111 CODEC 931
No. Cion doc.:	9965/16 MAR 162 CODEC 848 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council on a system of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service and amending Directive 2009/16/EC of the European Parliament and of the Council on port State control and repealing Council Directive 1999/35/EC – Analysis of the final compromise text with a view to agreement

CONTEXT AND CONTENT OF THE PROPOSAL

1. On 7 June 2016, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council.
2. The proposal forms part of a broader review of the EU passenger ship safety legislation, in line with a "fitness check" carried out by the Commission.¹
3. The Commission proposes to replace Council Directive 1999/35/EC² in order to update, clarify and simplify the existing survey requirements for ro-ro ferries and high-speed passenger craft, while maintaining the same level of safety and key delivery mechanisms.

¹ "REFIT – Adjusting Course: EU Passenger Ship Safety Legislation Fitness Check", doc. 13230/15 + ADD 1 and 2.

STATE OF PLAY

4. The Council reached a general approach on the proposal at the TTE Council on 1 December 2016.
5. The European Parliament Committee on Transport and Tourism (TRAN) appointed Mr Dominique Riquet (ALDE-France) as rapporteur on 27 June 2016. The TRAN Committee adopted its report on the proposal (with 23 amendments) on 11 April 2017.
6. On 11 May 2017, a first informal trilogue took place, followed by a second informal trilogue on 30 May.
7. The third trilogue took place on 14 June 2017 in Strasbourg.
8. At that trilogue, an agreement *ad referendum* was reached, the main elements of which are described below.
9. Changes compared to the general approach are marked in **bold** (new text) and ~~striketrough~~ (deleted text).

THE FINAL COMPROMISE TEXT

10. As an initial remark, the Presidency would like to stress the fact that the European Parliament is willing to accept a very large part of the Council general approach. It should also be noted that the Parliament is prepared to withdraw some amendments that pose problems for Member States, such as the deletion of the minimum criteria for inspectors (Article 2(1)(12)) and the request for an obligatory inspection when there is a change of management or transfer of class (Article 5(3)). The architecture of the general approach has been fully respected, in particular the adaptation of the inspection regime to the Paris MoU framework.

² 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, 1.6.1999, p. 1).

11. In terms of more important changes to the general approach, attention is drawn to the following:
- Costs related to inspections (new recital 6b): the European Parliament had introduced an amendment to Article 9(1) according to which extra port charges would be governed by the contractual relationship between the operator and the port. The Parliament accepted not only to move this to a recital, but also the much more general compromise text presented by the Council.
 - Social considerations (recital 8b): the Council's compromise text was welcomed by the Parliament.
 - Transposition derogation for landlocked countries (Article 1(2a) and recital 9a): the Parliament could agree to moving the transposition derogation to the scope, a possible solution indicated by the Presidency when the mandate was discussed. The relevant paragraph and recital are almost identical to the ones that can be found in the port State control Directive.
 - Inspection database (Article 10(1) and (2)): the Parliament could accept the Council's compromise text for Article 10(1). As regards the Parliament's proposal to include in Article 10(2) a 24-hour deadline for transferring the inspection report to the database, the words "without delay" were introduced instead.
 - Annual inspection commitment (Article 14a(4) of the port State control Directive): the Parliament insisted on its amendment 21 and would not accept it only as a recital. The Presidency considers the amendment bring some added value for Member States and therefore accepted to include it.
 - Transposition deadline (Article 17): the Parliament could not accept the Council's compromise proposal of 30 months, and suggested a deadline of 24 months. The Presidency agreed *ad referendum* to this, given that it was necessary for a successful outcome.
12. The Presidency considers that the agreement reached with the European Parliament is very balanced and takes into account all the concerns raised by Member States throughout the negotiations.

CONCLUSION

13. In the light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the Annex with a view to reaching an agreement at first reading with the European Parliament;
 - allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Directive in the same form as set out in the Annex to this report, the Council would adopt the Directive in the form of the Commission proposal as thus amended by the Parliament.
-

2016/0172 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 of the European Parliament and of the Council on port State control and repealing Council Directive 1999/35/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C 34, 2.2.2017, p. 176.

Whereas:

- (1) The Union legislation relating to a system of mandatory surveys for the safe operation of regular ro-ro passenger ship and high-speed passenger craft services dates from 1999. Account should be taken of the progress made in the implementation of the port State control regime put in place by Directive 2009/16/EC of the European Parliament and of the Council² as well as experience gained during the operation of the Paris Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982.
- (2) The Regulatory Fitness Programme (REFIT) fitness check³ showed that the Union passenger ship safety legal framework resulted in a common safety level for passenger ships within the Union. It also showed that as Union passenger safety legislation has developed over time in response to differing demands and situations, there is a certain level of overlap and duplication that can and should be streamlined and simplified to reduce the administrative burden on shipowners as well as to rationalise the effort made by Member States' maritime administrations.
- (3) Most Member States already combine mandatory surveys for the safe operation of regular ro-ro passenger ships with other types of surveys and inspections where possible, namely flag State surveys and port State control inspections. To further reduce the inspection effort and to maximise the time in which the ship **or craft** can be commercially exploited, **whilst continuing to ensure high safety standards**, vessels subject to port State control inspections should be therefore transferred to Directive 2009/16/EC and the scope of this Directive should be confined to ships providing regular ro-ro passenger ship and high-speed passenger craft services between ports within a Member State or between a port in a Member State and a port in a third State where the flag of the vessel is the same as the Member State in question. **With regard to vessels carrying out regular ro-ro passenger ship and high-speed passenger craft services between a Member State and a third country, Directive 2009/16/EC should apply if the flag is not the same as the flag of the Member State in question.**

² Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

³ COM(2015) 508.

- (4) The concept of the 'host State' was introduced by Council Directive 1999/35/EC⁴ in order to facilitate cooperation with third States prior to the 2004 Union enlargement. This concept was found to be no longer relevant and should be therefore removed.
- (5) Directive 1999/35/EC provided that every 12-month period a specific survey and a survey during regular service must be carried out by host States. Although the objective of this requirement was to ensure that these two inspections are carried out with a **sufficient** interval between them, the REFIT fitness check demonstrated that this is not always the case. **In order to clarify the inspection regime and ensure a harmonised inspection framework that ensures a high level of safety, while taking account of the common needs of the services**, it should be clarified that the two annual inspections should take place at regular, approximately six monthly intervals. **Those consecutive inspections should be no less than four and no more than eight months apart**, provided the vessel is in service.
- (6) Directive 1999/35/EC referred to 'surveys' rather than 'inspections'. The word survey is used in international conventions to indicate the obligation of flag States to monitor the compliance of ships with the international standards and issue or renew, where relevant, certificates. However, the special inspection regime for ro-ro passenger ships and high-speed passenger craft on regular service cannot be considered a survey and the relevant inspection forms are not and cannot be considered as seaworthiness certificates. Therefore, the term 'survey' should be replaced by 'inspection' when referring to specific surveys as currently provided for in Directive 1999/35/EC.
- (6a) Given their specific risk profile, ro-ro passenger ships and high-speed passenger craft should be regularly inspected as a matter of priority. For the purposes of port State control, any inspections of ro-ro passenger ships falling within the scope of Annex YY of Directive 2009/16/EC should be included in the total number of annual inspections carried out by each Member State.**

⁴ 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, 1.6.1999, p. 1).

- (6b) Costs related to inspections leading to the prohibition of departure of vessels should be paid by the company.**
- (7) In order to take account of developments at international level and experience, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of excluding amendments to the international instruments from the scope of this Directive if necessary and updating the technical requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (8) Directive 2009/16/EC should be amended to ensure that the content and frequency of ro-ro passenger ships and high-speed passenger craft inspections is maintained. Specific provisions for inspections and verifications of ro-ro passenger ships and high-speed passenger craft on regular service eligible for port State control should be therefore transferred to Directive 2009/16/EC.
- (8a) When inspections are carried out under Directive 2009/16/EC, all possible efforts should be made to avoid a ship being unduly detained or delayed.**
- (8b) It is important to take into account onboard working and living conditions of the crew and its training and qualifications, given that health, safety and social considerations are closely intertwined.**

- (9) In view of the full monitoring cycle of European Maritime Safety Agency visits, the Commission should evaluate the implementation of this Directive no later than [seven years after the date referred to in the second subparagraph of Article 17(1)] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all information necessary for this evaluation.
- (9a) **In order not to impose a disproportionate administrative burden on landlocked Member States, a *de minimis* rule should allow such Member States to derogate from the provisions of this Directive, which means that such Member States, as long as they meet certain criteria, are not obliged to transpose this Directive.**
- (9b) **Since the objectives of this Directive, namely ensuring safe operation of ro-ro passenger ships and high-speed passenger craft in regular service, cannot be sufficiently achieved by the Member States alone in view of the internal market dimension of maritime passenger transport and the cross-border nature of the operation of such ships and craft in the Union and at international level, but can be better achieved at Union level by establishing a common level of safety and avoiding distortion of competition, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.⁵**
- (10) To increase legal clarity and consistency and in view of the number of amendments concerned, Directive 1999/35/EC should be repealed and Directive 2009/16/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

⁵ *Standard recital included at the request of the Parliament Legal Service.*

Article 1

Scope

1. This Directive applies to ro-ro passenger ships and high-speed passenger craft operating
 - (a) on a regular service between a port of a Member State and a port in a third State where the flag of the vessel is the same as that of the Member State in question; or
 - (b) on domestic voyages on a regular service in sea areas in which ships of Class A may operate in accordance with Article 4 of Directive 2009/45/EC of the European Parliament and of the Council⁶.
- 1a. It does not apply to ro-ro passenger ships and high-speed passenger craft falling under Directive 2009/16/EC.
2. Member States may apply this Directive to ro-ro passenger ships and high-speed passenger craft operating on a regular service on domestic voyages in sea areas other than those referred to in paragraph 1(b).
- 2a. **Member States which do not have seaports and which can verify that of the total number of individual vessels calling annually over a period of the three previous years at their river ports, less than 5 % are passenger ships or high-speed passenger craft covered by this Directive, may derogate from the provisions of this Directive except for the obligation set out in the following subparagraph.**

Those Member States which do not have seaports shall communicate to the Commission by [the date of transposition of the Directive] the total number of vessels and the number of ro-ro passenger ships and high-speed passenger craft calling at their ports during the three-year period referred to above and shall inform the Commission annually thereafter of any subsequent change to the abovementioned figures.

⁶ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p.1).

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'ro-ro passenger ship' means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;
2. 'high-speed passenger craft' means a ship as defined in Regulation **1 of Chapter X** of the 1974 SOLAS Convention, in its up-to-date version, which carries more than 12 passengers;
3. '1974 SOLAS Convention' means the 1974 International Convention for the Safety of Life at Sea, together with Protocols and amendments thereto, in its up-to-date version;
4. 'High Speed Craft Code' means the 'International Code for Safety of High Speed Craft' contained in IMO Maritime Safety Committee Resolution MSC 36 (63) of 20 May 1994 or the International Code for Safety of High-Speed Craft, 2000 (2000 HSC Code), contained in IMO Resolution MSC.97(73) of December 2000, in its up-to-date version;
- 4a. 'HSSC' means the IMO Survey Guidelines under the Harmonized System of Survey and Certification, in their up-to-date version;
5. 'regular service' means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
 - (a) according to a published timetable; or
 - (b) with crossings so regular or frequent that they constitute a recognisable systematic series;
6. 'sea area' means any sea area or **sea** route established **pursuant to** Article 4 of Directive 2009/45/EC;

7. 'certificates' means:
- (a) for ro-ro passenger ships and high-speed passenger craft engaged on international voyages, the safety certificates issued under the 1974 SOLAS Convention or under the High Speed Craft Code respectively, together with the relevant attached records of equipment;
 - (b) for ro-ro passenger ships and high-speed passenger craft engaged on domestic voyages, the safety certificates issued in accordance with Directive 2009/45/EC together with the relevant attached records of equipment;
8. 'administration of the flag State' means the competent authorities of the State whose flag the ro-ro passenger ship or the high-speed passenger craft is entitled to fly;
9. '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;
10. [...]
11. 'company' means the organisation or person who has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code or, in cases where SOLAS Chapter IX does not apply, the owner of the ro-ro passenger ship or the high-speed passenger craft or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ro-ro passenger ship or the high-speed passenger craft from its owner;
12. 'inspector' means a public-sector employee or other person, duly authorised by the competent authority of the Member State to carry out the inspections provided for in this Directive and responsible to that competent authority and fulfilling the minimum criteria specified in Annex XI of Directive 2009/16/EC;
- 12a. 'competent authority of the Member State' means the authority appointed by the Member State under this Directive and responsible for carrying out the tasks assigned to it by this Directive.**

Article 3

Pre-commencement inspections

1. Prior to the start of operation by a ro-ro passenger ship or high-speed passenger craft on a regular service covered by this Directive, **the competent authorities of the** Member States shall carry out a pre-commencement inspection, consisting of:
 - (a) verification of the compliance with the requirements laid down in Annex I;
 - (b) an inspection, in accordance with Annex II, to satisfy themselves that the ro-ro passenger ship or high-speed craft fulfils the necessary requirements for safe operation of a regular service.
2. [...]
3. The pre-commencement inspection shall be carried out by an inspector.
4. When requested by a Member State, companies shall provide evidence of compliance with the requirements of Annex I in advance but not earlier than one month before the pre-commencement inspection.

Article 4

Exceptions to the pre-commencement inspection obligation

- 1. In the case of the pre-commencement inspection, a Member State may exempt certain requirements or procedures of Annexes I and II relevant to any annual flag State survey or inspection carried out, within the previous six months, wherein the relevant procedures and guidelines for surveys as specified in HSSC or procedures designed to achieve the same goal are followed. Member States shall transfer the relevant information to the inspection database in accordance with Article 10.

1. When a ro-ro passenger ship or high-speed passenger craft is to be engaged on another regular service, the Member State **may** take into account inspections and surveys previously carried out for that ro-ro passenger ship or high-speed passenger craft for operation on a previous regular service covered by this Directive. Provided that the Member State is satisfied with those previous inspections and surveys and that they are relevant to the new operational conditions, the inspections and surveys provided for in Article 3(1) need not be applied prior to the ro-ro passenger ship or high-speed passenger craft starting operation on the new regular service.
2. At the request of a company, Member States may confirm in advance their agreement as to the relevance of the previous inspections and surveys to new operational conditions.
3. In cases where, following unforeseen circumstances, a replacement ro-ro passenger ship or high-speed passenger craft must be introduced rapidly to ensure continuity of service, and paragraph 1 is not applicable, the Member State may allow the ro-ro passenger ship or craft to start operating provided that:
 - (a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfil the necessary requirements for safe operation, and
 - (b) the Member State completes the pre-commencement inspection provided for in Article 3(1) within one month.

Article 5
Regular inspections

1. Member States shall once in every 12-month period, carry out:
 - (a) an inspection, in accordance with Annex II; and
 - (b) an inspection during a regular service, not before four months but not later than eight months following the inspection referred to in point (a). This inspection shall cover the items listed in Annex III and sufficient number of the items listed in Annexes I and II, according to the professional judgment of the inspector, to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfil all the necessary requirements for safe operation.

A pre-commencement inspection in accordance with Article 3 shall be considered as an inspection for the purposes of point (a).

2. The inspection referred to in point (a) of paragraph 1 may, at the discretion of the Member State, be carried out at the same time as or in conjunction with the annual flag State survey wherein the relevant procedures and guidelines for surveys as specified in HSSC or procedures designed to achieve the same goal are followed.
3. Member States shall carry out an inspection in accordance with Annex II each time the ro-ro passenger ship or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change in management, or a transfer of class.
However, in case of change in management, or transfer of class, the Member State may, after taking account of inspections previously carried out for the ro-ro passenger ship or high-speed passenger craft, and provided that the safe operation of the ro-ro passenger ship or craft is not affected by this change or transfer, dispense the ro-ro passenger ship or high-speed passenger craft from the inspection required by this paragraph.

Article 6

Notification and report of inspection

1. On completion of any inspection performed in accordance with this Directive, the inspector shall draw up a report in accordance with Annex IX of Directive 2009/16/EC.
2. The information contained in the report shall be communicated to the inspection database provided for in Article 10. The master shall also be provided with a copy of the inspection report.

Article 7

Rectification of deficiencies, prohibition of departure and suspension of inspection

1. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with this Directive are rectified.
2. In the case of deficiencies which are clearly hazardous to **health or** safety or which pose an immediate danger to **health or** life, the ro-ro passenger ship or high-speed passenger craft, its crew and passengers the Member State shall ensure that the ro-ro passenger ship or high-speed passenger craft is subject to a prohibition of departure order. The master shall be provided with a copy of the prohibition of departure order.
3. The prohibition of departure shall not be lifted until the hazard has been removed **to the satisfaction of the competent authority of the Member State** or until the **competent authority of the** Member State has established that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to the ro-ro passenger ship or high-speed passenger craft or other ships.
4. If a deficiency referred to in paragraph 2 cannot be readily rectified in the port in which the deficiency has been confirmed or revealed, the Member State may agree to allow the ship to proceed to an appropriate repair yard where it may be readily rectified.

5. In exceptional circumstances, where the overall condition of a ro-ro passenger ship or high-speed passenger craft is obviously substandard, the Member State may suspend the inspection of that ro-ro passenger ship or craft until the company takes the steps necessary to ensure that the ro-ro passenger ship or high-speed passenger craft is no longer clearly hazardous to safety or health or poses an immediate danger to the life of its crew and passengers or that it complies with the relevant requirements of applicable international conventions.
6. Where the Member State suspends the inspection in accordance with paragraph 5, the ro-ro passenger ship or high-speed passenger craft shall be automatically placed under a prohibition of departure order. The prohibition of departure order shall be lifted where the inspection has been resumed and successfully completed and where the conditions set out in paragraph 3 of this Article and in Article 9(2) have been complied with.
7. In order to alleviate port congestion, the **competent authority of the** Member State may allow a ro-ro passenger ship or high-speed passenger craft subject to a prohibition of departure order to be moved to another part of the port if it is safe to do so. However, the risk of port congestion shall not be a consideration when deciding on a prohibition of departure order or the lifting a prohibition of departure order. Port authorities or bodies shall facilitate the accommodation of such ships.

Article 8

Right of appeal

1. The company shall have a right of appeal against a prohibition of departure order by the Member State. An appeal shall not suspend the prohibition of departure order, unless interim measures are granted in accordance with national law. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation.
2. Member States authority shall inform the master of the ro-ro passenger ship or high-speed passenger craft subject to a prohibition of departure order of the right of appeal and the applicable procedures. When, as a result of an appeal, a prohibition of departure order is revoked or amended, Member States shall ensure that the inspection database provided for in Article 10 is amended accordingly without delay.

Article 9

Costs

1. Should the inspections referred to in Articles 3 and 5 confirm or reveal deficiencies warranting a prohibition of departure, all costs relating to the inspections shall be covered by the company.
2. The prohibition of departure order shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

Article 10

Inspection database

1. The Commission shall develop, maintain and update an inspection database **to which all Member States shall be connected and** which **shall** contain all the information required for the implementation of the inspection system provided for by this Directive. **This database will be** based on the inspection database referred to in Article 24 of Directive 2009/16/EC **and have similar functionalities.**
2. Member States shall ensure that the information related to inspections performed in accordance with this Directive, including on deficiencies and prohibition of departure orders, is transferred **without delay** to the inspection database as soon as the inspection report is completed or the prohibition of departure order lifted. With regard to the particulars of the information, provisions of Annex XIII of Directive 2009/16/EC shall apply mutatis mutandis.
3. Member States shall ensure that the information transferred to the inspection database is validated within 72 hours for publication purposes.
4. The Commission shall ensure that the inspection database makes it possible to retrieve any relevant data concerning the implementation of this Directive on the basis of the inspection data provided by Member States.
5. Member States shall have access to all the information recorded in the inspection database which is relevant for implementing the inspection system of this Directive and of Directive 2009/16/EC.

Article 11

Penalties

Member States shall lay down a system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided shall be effective, proportionate and dissuasive.

Article 12

Amendment procedure

1. The Commission is empowered to adopt delegated acts in accordance with Article 13, amending the Annexes 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.
2. In exceptional circumstances, where duly justified by an appropriate analysis by the Commission and in order to avoid a serious and unacceptable threat to maritime safety, to health, to shipboard living or to working conditions or to the marine environment, or incompatibility with Union maritime legislation, the Commission is empowered to adopt delegated acts in accordance with Article 13, amending this Directive in order not to apply, for the purpose of this Directive, an amendment to the international instruments referred to in Article 2.

Article 13

Exercise of delegation

1. The power to adopt delegated acts referred to in Article 12 is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 12 shall be conferred on the Commission a period of seven years from [*OJ: insert the date of entry into force of this Directive*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall 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. The delegation of power referred to in Article 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 12 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.
7. A delegated act amending this Directive in order not to apply any amendment to the international instruments in accordance with Article 12(2) shall be adopted at least three months before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment. In the period preceding the entry into force of such delegated act, Member States shall refrain from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.

Article 14
Amendments to Directive 2009/16/EC

Directive 2009/16/EC is amended as follows:

1. in Article 2, the following points 25 to 27 are inserted:

"25. 'ro-ro passenger ship' means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;

26. 'high-speed passenger craft' means a ship as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, in its up-to-date version, which carries more than 12 passengers;

27. 'regular service' means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

(i) according to a published timetable; or

(ii) with crossings so regular or frequent that they constitute a recognisable systematic series;

28. [...]

2. in Article 3(1), the following subparagraph is added:

"This Directive shall also apply to inspections of ro-ro passenger ships and high-speed passenger craft carried out outside a port or away from an anchorage during a regular service in accordance with Article 14a.";

- 2a. in Article 13, the first line is replaced by the following:

"Member States shall ensure that ships which are selected for inspection in accordance with Article 12 or Article 14a are subject to an initial inspection or a more detailed inspection as follows:"

3. the following Article 14a is inserted:

"Article 14a

Inspection of ro-ro passenger ships and
high speed passenger craft in regular service

1. Ro-ro passenger ships and high-speed passenger craft operating on a regular service are eligible to inspections in accordance with the time frame and other requirements set out in Annex [YY].
2. [...]
 - (a) [...]
 - (b) [...]
3. Member States shall, when planning inspections of a ro-ro passenger ship or high-speed passenger craft, take due account of the operational and maintenance schedule of the ro-ro passenger ship or high-speed passenger craft.
4. When a ro-ro passenger ship or high-speed passenger craft has been subject to an inspection in accordance with Annex [YY], such inspection shall be recorded in the inspection database, and be taken into account for the purposes of Articles 10, 11 and 12 and for calculating the fulfilment of the inspection commitment of each Member State. **It shall be included in the total number of annual inspections carried out by each Member State, as provided for in Article 5.**
- 4a. Article 9(1), Article 11(a), ~~Article 12~~ and Article 14 are not applicable to ro-ro passenger ships and high-speed passenger craft on a regular service inspected under this Article.
- 4b. The competent authority shall ensure that ro-ro passenger ships or high-speed passenger craft, subject to an additional inspection in accordance with Article 11(b), are selected for inspection in accordance with Annex I, Part II 3A(c) and Part 3B(c). Inspections carried out under this paragraph shall not affect the inspection interval as determined in paragraph 2 of Annex [YY].

4c. The inspector of the competent authority of the port State may agree, during an inspection of a ro-ro passenger ship or high-speed passenger craft, to be accompanied, as an observer, by a port State inspector of another Member State. Where the flag of the vessel is that of a Member State, the port State shall, upon request, invite a representative of the flag State to accompany the inspection as an observer.";

4. in Article 15, paragraph 3 is deleted;

5. in Article 16, paragraph 1 is replaced by the following:

"1. A Member State shall refuse access to its ports and anchorages to any ship which:

- flies the flag of a State whose detention rate falls into the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and as published annually by the Commission, and has been detained more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU, or
- flies the flag of a State whose detention rate falls into the grey list, adopted in accordance with the Paris MOU on basis of information recorded in the inspection database and as published annually by the Commission, and has been detained more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

The first subparagraph shall not apply in the situations described in Article 21(6).

Refusal of access shall become applicable as soon as the ship leaves the port or anchorage where it has been the subject of a third detention and where a refusal of access order has been issued.";

6. [...]

6a. Annex [YY] to Directive 2009/16/EC is added as follows:

"Annex [YY]

Inspection of ro-ro passenger ships and
high-speed passenger craft on a regular service

- 1.1. Prior to the start of an operation by a ro-ro passenger ship or high-speed passenger craft on a regular service covered by this Directive, Member States shall carry out an inspection, in accordance with Article 3(1) of Directive [XXXX], to ensure that the ro-ro passenger ship or high-speed passenger craft fulfils the necessary requirements for the safe operation of a regular service.
- 1.2. When a ro-ro passenger ship or high-speed passenger craft is to be engaged on another regular service, the Member State concerned **may** take into account inspections previously carried out by a Member State within the last eight months for that ro-ro passenger ship or high-speed passenger craft for operations on a previous regular service covered by this Directive provided that in every case the Member State is satisfied that previous inspections are relevant to the new operational conditions and during these inspections the necessary requirements for the safe operation of a regular service were fulfilled. The inspections provided for in paragraph 1.1 need not to be applied prior to the ro-ro passenger ship or high-speed passenger craft starting operation on the new regular service.
- 1.3. In cases where, following unforeseen circumstances **giving rise to an urgent need for the rapid introduction of** a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and paragraph 1.2. is not applicable, the Member State may allow the passenger ship or craft to start operating provided that:
 - (a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfil the necessary requirements for safe operation; and
 - (b) the Member State completes the inspection provided for in Article 3(1) of Directive [XXXX] within one month.

2. Member States shall, once per year, but not before four months and not later than eight months following the previous inspection, carry out:
 - (a) an inspection, including the requirements of Annex II to Directive [XXXX] and Commission Regulation 428/2010 as applicable; and
 - (b) an inspection during a regular service. This inspection shall include the items listed in Annex III to Directive [XXXX] and a sufficient number of the items listed in Annexes I and II to Directive [XXXX], according to the professional judgment of the inspector, to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfill all the necessary requirements for safe operation.
3. Where a ro-ro passenger ship or high-speed passenger craft has not been inspected in accordance with paragraph 2, the ro-ro passenger ship or high-speed passenger craft shall be considered as Priority I.
4. An inspection in accordance with paragraph 1.1. shall be considered as an inspection for the purposes of paragraph 2(a) of this Annex."

Article 15

Repeal

Directive 1999/35/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive and be read in accordance with the correlation table in Annex IV.

Article 16

Review

The Commission shall evaluate the implementation of this Directive and submit the results of the evaluation to the European Parliament and the Council no later than *[seven years after the date referred to in the second subparagraph of Article 17(1)]*.

Article 17
Transposition

1. Member States shall adopt and publish, by [**24 months after the entry into force**] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [**24 months after the entry into force**].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

- ~~2a. Member States which do not have seaports and which can verify that of the total number of individual vessels calling annually over a period of the three previous years at their river ports, less than 5 % are ships covered by this Directive, shall not be obliged to transpose this Directive.~~

~~Member States which do not have seaports shall communicate to the Commission at the latest on the date of transposition of the Directive the total number of vessels and the number of ships calling at their ports during the three-year period referred to above and shall inform the Commission of any subsequent change to the abovementioned figures.~~

Article 18
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX 1

SPECIFIC REQUIREMENTS FOR VESSELS IN REGULAR SERVICE

(as referred to in Articles 3 and 5)

The following shall be verified:

1. the master is provided with appropriate information on the availability of shore-based navigational guidance systems and other information schemes to assist him in the safe conduct of the voyages, before the ro-ro passenger ship or high-speed passenger craft begins to sail, and that he makes use of the navigational guidance and information schemes set up by Member States;
2. the relevant provisions of paragraphs 2 to 6 of MSC/Circular 699 of 17 July 1995 "Revised guidelines for passenger safety instructions" are applied;
3. a table with the shipboard working arrangements is posted in an easily accessible place, and contains:
 - a) the schedule of service at sea and service in port, and
 - b) the maximum hours of work or the minimum hours of rest required for watchkeepers;
4. the master is not constrained from taking any decision, which in the master's professional judgment is necessary for safe navigation and operation, in particular in severe weather and in heavy seas;
5. the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;

6. any damage to, or permanent deflection of shell doors and associated hull plating that may affect the integrity of the ro-ro passenger ship or high-speed passenger craft, and any deficiencies in the securing arrangements of such doors, are promptly reported to both the flag State administration and the port State and are promptly repaired to their satisfaction;
 7. an up-to-date voyage plan is available before the departure of the ro-ro passenger ship or high-speed passenger craft on its voyage. In preparing the voyage plan the guidelines set out in IMO Assembly Resolution A.893(21) of 25 November 1999 "Guidelines for voyage planning" shall be taken fully into account;
 8. general information about the services and assistance available to elderly and disabled persons on board is made known to the passengers and is made available in formats suitable for people with impaired sight.
-

ANNEX 2
PROCEDURES FOR INSPECTIONS

(as referred to in Articles 3 and 5)

1. The inspections shall ensure that statutory requirements issued by or on behalf of the flag State, in particular those relating to for construction, subdivision and stability, machinery and electrical installations, loading, stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods, radiocommunications and navigation are fulfilled. The inspections shall include for that purpose:
 - the starting of the emergency generator,
 - an inspection of emergency lighting,
 - an inspection of the emergency source of power for radio-installations,
 - a test of the public address system,
 - a fire drill, including a demonstration of the ability to use firemen's outfits,
 - the operation of the emergency fire-pump with two firehoses connected to the fire main line in operation,
 - the testing of the remote emergency stop controls for fuel supply to boilers, main and auxiliary engines, and for ventilation fans,
 - the testing of remote and local controls for the closing of fire dampers,
 - the testing of fire detection and alarm systems,
 - the testing of proper closing of fire doors,

- the operation of bilge pumps,
- the closing of watertight bulkhead doors; both from the local and remote control positions,
- a demonstration that shows that key crew members are acquainted with the damage control plan,
- the lowering of at least one rescue boat and one lifeboat to the water, starting and testing their propulsion and steering system, and recovering them from the water into their stowed position on board,
- the checking that all lifeboats and rescue boats correspond to the inventory,
- the testing of the ship's or craft's steering gear and auxiliary steering gear.

2. [...]

3. Inspections shall focus on the familiarisation of crew members with, and their effectiveness in, safety procedures, emergency procedures, maintenance, working practices, passenger safety, bridge procedures and cargo and vehicle-related operations. Seafarers' ability to understand and, where appropriate, give orders and instructions and report back in the common working language, as recorded in the ship's logbook shall be checked. The documented evidence that crew members have successfully followed a special training shall be checked, in particular with regard to:

- crowd-management training,
- familiarisation training,
- safety training for personnel providing direct safety assistance to passengers in passenger spaces, and in particular to elderly and disabled persons in an emergency, and
- crisis management and human behaviour training.

The inspection shall include an assessment as to whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel.

4. Certificates of competence of crew members serving on board vessels falling within the scope of this Directive shall comply with the provisions of Directive 2008/106/EC of the European Parliament and of the Council⁹.
-

⁹ Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33).

ANNEX 3**PROCEDURES FOR CARRYING OUT INSPECTIONS DURING A REGULAR SERVICE**

(as referred to in Article 5)

1. Passenger information

The means used to ensure that the passenger number for which the ro-ro passenger ship or high-speed passenger craft (hereafter referred to as "ship") is certified is not exceeded. The means of registration of passenger information complies with Council Directive 98/41/EC¹. How the information on the total number of passengers is passed to the master and, if appropriate, how passengers undertaking a double crossing without going ashore are included in the total for the return voyage.

2. Loading and stability information

That, when applicable, reliable draught gauges are fitted and are in use. That measures are taken to ensure that the ship is not overloaded and the appropriate sub-division load line is not submerged. That the loading and stability assessment is carried out as required. That goods vehicles and other cargo are weighed where required and the figures passed to the ship for use in the loading and stability assessment. That damage control plans are permanently exhibited and that booklets containing damage control information are provided for the ship's officers.

¹ Council Directive 98/41/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, 2.7.1998, p.35).

3. *Security for sea*

The procedure to ensure that the ship is secured for sea before leaving the berth, which should include a positive reporting procedure that all the shell watertight and weather-tight doors are closed. That all the vehicle deck doors are closed before the ship leaves the berth or remain open long enough only to enable the bow visor to be closed, the closing arrangements for the bow, stern and side doors, and the provision of indicator lights and TV surveillance to show their status on the navigating bridge. Any difficulties with the operation of the indicator lights, particularly the switches at the doors, should be ascertained and reported.

4. *Safety announcements*

The form of routine safety announcements and the posting of instructions and guidance on emergency procedures in the appropriate language(s). That the routine safety announcement takes place at the commencement of the voyage and can be heard in all public spaces, including open decks, to which passengers have access.

5. *Log book entries*

An examination of the log book to ensure that the entries are being made regarding the closing of the bow, stern and other watertight and weather-tight doors, drills for sub-division watertight doors, testing of steering gears, etc. Also that draughts, freeboard and stability are being recorded as well as the common working language for the crew.

6. *Dangerous goods*

That any cargo of dangerous or polluting goods is carried in accordance with the relevant regulations and, in particular, that a declaration concerning dangerous and polluting goods is provided together with a manifest or stowage plan to show their location on board, that the carriage of the particular cargo is permitted on passenger ships, and that the dangerous and polluting goods are properly marked, labelled, stowed, secured and segregated.

That vehicles carrying dangerous and polluting goods are properly placarded and secured. That, when dangerous and polluting goods are carried, a copy of the relevant manifest or stowage plan is available ashore. That the master is aware of the notification requirements under Directive 2002/59/EC of the European Parliament and of the Council² and of the instructions on the emergency procedures to be followed and the rendering of first aid should there be an incident involving the dangerous goods or marine pollutants. That the means of ventilating the vehicle decks is in use at all times, is increased when the engines of the vehicles are running and that there is some form of indication on the bridge to show that the vehicle deck ventilation is in operation.

7. *Securing freight vehicles*

How freight vehicles are secured, for example, whether block stow or individual lashings. Whether sufficient strong points are available. The arrangements for securing freight vehicles when adverse weather is experienced or expected. The method of securing coaches and motor cycles, if any. That the ship has a cargo securing manual.

8. *Vehicle decks*

Whether special category and ro-ro cargo spaces are being continuously patrolled or monitored by a TV surveillance system so that the movement of vehicles in adverse weather and the unauthorised entry of passengers may be observed. That fire doors and entrances are kept shut and that notices are posted to keep passengers off the vehicle decks whilst the ship is at sea.

² 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, 5.8.2002, p.10).

9. *Closure of watertight doors*

That the policy laid down in the ship's operational instructions for the sub-division watertight doors is being followed. That the required drills are being carried out. That the bridge control for the watertight doors is kept, when possible, on "local" control. That the doors are being kept closed in restricted visibility and any hazardous situation. That crews are instructed in the correct way to operate the doors and are aware of the dangers of their misuse.

10. *Fire patrols*

It should be confirmed that an efficient patrol is being maintained so that any outbreak of fire may be readily detected. This should include special category spaces where a fixed fire detection and alarm system is not fitted noting that these spaces may be patrolled as indicated in paragraph 8.

11. *Communications in an emergency*

That there are sufficient crew members in accordance with the muster list to assist passengers in an emergency and that they are readily identifiable and able to communicate with the passengers in an emergency, taking into account an appropriate and adequate combination of any of the following factors:

- a) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
- b) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;
- c) the possible need to communicate during an emergency by some other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes when verbal communication is impractical);

- d) the extent to which complete safety instructions have been provided to passengers in their native language or languages;
- e) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers.

12. Common working language between crew members

Verify that a working language is established to ensure effective crew performance in safety matters and that this working language is recorded in the ship's logbook.

13. Safety equipment

That the live-saving and fire appliances, including the fire doors and other items of the structural fire protection that may be readily inspected, are being maintained. That fire control plans are permanently exhibited or booklets containing the equivalent information are provided for the information of the ship's officers. That the stowage of the lifejackets is appropriate and that the stowage of children's lifejackets may be readily identified. That the loading of vehicles does not prevent the operation of the fire controls, emergency shut-offs, controls for the storm valves, etc. that may be located on the vehicle decks.

14. Navigational and radio equipment

That the navigational and radio communications equipment, including emergency position-indicating radio beacons (EPIRBs), are operational.

15. Supplementary emergency lighting

That supplementary emergency lighting is fitted, when required by the regulations, and that a record of deficiencies is being kept.

16. *Means of escape*

Marking, in accordance with the applicable requirements, and the lighting, from both the main and emergency sources of power, of the means of escape. The measures taken to keep vehicles clear of escape routes where the means of escape cross or pass through vehicle decks. That exits, particularly exits from duty free shops, which have been found to be blocked by an excess of goods, are kept clear.

17. [...]

18. *Engine room cleanliness*

That the engine room is maintained in a clean condition with regard to maintenance procedures.

19. *Garbage disposal*

That the arrangements for the handling and disposal of garbage are satisfactory.

20. *Planned maintenance*

All companies should have specific standing orders, with a planned maintenance system, for all safety related areas including bow and stern doors and side openings, together with their closing arrangements, but also covering engine room maintenance and safety equipment. Plans should be in place for periodically checking all items so as to maintain safety standards at the highest level. Procedures should be in place for recording deficiencies and confirming they have been properly rectified so that the master and the designated person ashore within the company management structure are aware of the deficiencies and are notified when they have been rectified within a time specified. Periodic checking of the operation of the inner and outer bow door closing arrangements should include the indicators, surveillance equipment and any scuppers in the spaces between the bow visor and the inner door and especially the closing mechanisms and their associated hydraulic systems.

21. *Making a voyage*

When making a voyage the opportunity should be taken to check overcrowding, including the availability of seats and the blocking of passageways, stairs and emergency exits by baggage and by passengers unable to find seats. That the vehicle deck is vacated by passengers before the ship sails and that they do not again have access until immediately prior to docking should also be checked.

ANNEX 4¹CORRELATION TABLE

Directive 1999/35/EC	New Directive
Article 1	--
Article 2(a), (b), (d), (e), (f), (g), (h), (j), (m), (n), (o), (r)	Article 2(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11)
Article 2(c), (i), (k), (l), (p), (q), (s)	--
Article 3	Article 1
Article 4	--
Article 5(1)(a)	Article 3
Article 5(1)(b), (2)	--
Article 6	Article 3
Article 7	Article 4
Article 8(1)	Article 5(1)
Article 8(2)	Article 5(3)
Article 8(3)	Article 9(1)
Article 9	Article 6
Article 10(1)(a), (b), (c),	Article 7

¹ *To be updated by the legal-linguistic revisers.*

Article 10(1)(d)	--
Article 10(2)	Article 7
Article 10(3)	Article 8
Article 10(4)	--
Article 11(1), (2), (3), (4), (5), (7), (8)	--
Article 11(6)	Article 6(1)
Article 13(1), (2), (4), (5)	--
Article 13(3)	Article 6(2) and Article 10
Article 14	--
Article 15	--
Article 16	--
Article 17	Article 12
Article 18	Article 11
Article 19	Article 17
Article 20	Article 16
Article 21	Article 18
Article 22	Article 19
Annex I	Annex I
