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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 2 to 5 October 2017)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure [1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Dominique RIQUET (ALDE, FR) presented one compromise amendment (amendment 24) to the proposal for a Directive, on behalf of the Committee on Transport and Tourism. This amendment had been agreed during the informal contacts referred to above.

[1] OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 4 October 2017, the plenary adopted the compromise amendment (amendment 24) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

P8_TA(2017)0375
System of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service***I

European Parliament legislative resolution of 4 October 2017 on the 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 (COM(2016)0371 – C8-0210/2016 – 2016/0172(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0371),

– having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0210/2016),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 19 October 2016[3],

– after consulting the Committee of the Regions,

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 21 June 2017 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Transport and Tourism (A8-0165/2017),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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3 OJ C 34, 2.2.2017, p. 176.

P8_TC1-COD(2016)0172

Position of the European Parliament adopted at first reading on 4 October 2017 with a view to the adoption of Directive (EU) 2017/… 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 and repealing Council Directive 1999/35/EC

(Text with EEA relevance)

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 Committee[4],

After consulting the Committee of the Regions ▌,

Acting in accordance with the ordinary legislative procedure[5],

[4] OJ C *34, 2.2.2017,* p. *176.*

[5] Position of the European Parliament of 4 October 2017.

Whereas:

(1) The Union law 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. It is now necessary to update that law in order to take account 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 Council[6] 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 and Performance Programme (REFIT) fitness check shows that the Union passenger ship safety legal framework has resulted in a common safety level for passenger ships within the Union. It also shows that, as a result of the way in which Union passenger safety law 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 required from Member States' maritime administrations.

[6] 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) Most Member States already, where possible, combine mandatory surveys for the safe operation of regular ro-ro ***passenger ships*** with other types of surveys and inspections, that is 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 therefore be transferred so that they fall within the scope of Directive 2009/16/EC. 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 country 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.***

(4) The concept of the 'host State' was introduced by Council Directive 1999/35/EC[7] in order to facilitate cooperation with third countries prior to the 2004 Union enlargement. This concept is no longer relevant and should therefore be removed.

(5) Directive 1999/35/EC provided that once in every 12-month period host States are to carry out a specific survey and a survey during a regular service. Although the objective of this requirement was to ensure that those 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 to ensure that there is a harmonised inspection framework that ensures a high level of safety, while taking account of the common needs of the*** **passenger** ***services***, it should be clarified that the two annual inspections should take place regularly, at approximately six-monthly intervals. ***If the vessel is in service, those consecutive inspections should be no less than four and no more than eight months apart.***

[7] 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).

(6) Directive 1999/35/EC refers 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 to be a survey and the relevant inspection forms are not and cannot be considered to be 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.

(7) Given their specific risk profile, ro-ro passenger ships and high-speed passenger craft should be regularly inspected, as a matter of priority. Any inspection of ro-ro passenger ships and high-speed passenger craft falling within the scope of Directive 2009/16/EC should be included in the total number of annual inspections carried out by each Member State.

(8) Costs related to inspections leading to the prohibition of departure of vessels should be paid by the company.

(9) In order to take account of developments at international level and of experience gained, 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 not applying, for the purposes of this Directive, amendments to the international instruments if necessary and updating the technical specifications. 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 of 13 April 2016 on Better Law-Making [8]. 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.

(10) 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 that are eligible for port State control should be therefore introduced into Directive 2009/16/EC.

8 OJ L 123, 12.5.2016, p. 1.

(11) 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.

(12) It is important to take into account the onboard working and living conditions of the crew and the training and qualifications of its members, given that health, safety and social considerations are closely intertwined.

(13) 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 deadline for the transposition of this Directive and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all the information necessary for this evaluation.

(14) 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.

(15) 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 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 rather be 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.

(16) 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:

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 of a third country where the flag of the vessel is the same as that of the Member State in question***;*** or

(b) on a regular service on domestic voyages 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 Council[9].

2. This Directive does not apply to ro-ro passenger ships and high-speed passenger craft falling under Directive 2009/16/EC.

3. 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).***

[9] 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).

4. ***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 second 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 in the first subparagraph and shall inform the Commission annually thereafter of any subsequent change to the abovementioned figures.

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 ***craft*** as defined in Regulation ▌**1** ***of Chapter X*** of the 1974 SOLAS Convention, and carrying more than 12 passengers;

(3) '1974 SOLAS Convention' means the 1974 International Convention for the Safety of Life at Sea, including Protocols and amendments thereto, in its up-to-date version;

(4) 'High Speed Craft Code' means the 'International Code of Safety for High Speed Craft' contained in IMO Maritime Safety Committee Resolution MSC.36(63) of 20 May 1994 or the International Code of Safety for High-Speed Craft, 2000 (2000 HSC Code), contained in IMO Resolution MSC.97(73) of December 2000, in its up-to-date version;

(5) 'HSSC' means the IMO Survey Guidelines under the Harmonized System of Survey and Certification, in its up-to-date version;

(6) '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;

(7) 'sea area' means any sea area ***or sea route*** established ***pursuant to*** Article 4 ▌ of Directive 2009/45/EC;

(8) '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;

(9) '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;

(10) '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;

▌

(11) 'company' means ***the organisation or person who has agreed to take over all the duties and responsibilities imposed by the International Management Code for Safe Operation of Ships and for Pollution Prevention (the ISM Code) in its up-to- date version or, in cases where Chapter IX of the 1974 SOLAS Conventiondoes 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 a Member State to carry out the inspections provided for in this Directive, who is responsible to that competent authority and who fulfils the minimum criteria specified in Annex XI of Directive 2009/16/EC***;***

(13) 'competent authority of the Member State' means the authority appointed by the Member State under this Directiveand responsible for carrying out the tasks assigned to it by this Directive.

Article 3

Pre-commencement inspections

1. Before a ro-ro ***passenger ship*** or high-speed passenger craft starts to operate 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; and

(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. The pre-commencement inspection shall be carried out by an inspector.

3. When requested by a Member State, companies shall provide evidence of compliance with the requirements of Annex I in advance of 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 pre-commencement inspections, a Member State may decide not to apply certain requirements or procedures in Annexes I and II relevant to any annual flag State survey or inspection carried out within the previous six months, provided that relevant procedures and guidelines for surveys specified in HSSC or procedures designed to achieve the same goal have been followed. Member States shall transfer the relevant information to the inspection database in accordance with Article 10.

2. When a ro-ro ***passenger ship*** or high-speed passenger craft is to be engaged on a regular service, the Member State ***may*** take into account inspections and surveys previously carried out in respect of that ro-ro ***passenger ship*** or high-speed passenger craft for operation on another 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 provided for in Article 3(1) do not need to be applied before the ro-ro ***passenger ship*** or high-speed passenger craft starts operating on the new regular service.

3. At the request of a company, Member States may confirm in advance that they agree that the previous inspections and surveys are relevant to the new operational conditions.

4. Where, due to unforeseen circumstances, there is ***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 2 does not apply, the Member State may allow the ***ro-ro passenger ship*** or craft to start operating provided that the following conditions are met:

(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, taking place not before ***four*** months but not later than ***eight*** months after the inspection ***referred to in point (a) and*** covering the items listed in Annex III and what, in ***the professional judgment of the inspector, constitutes*** a sufficient number of the items listed in Annexes I and II 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 to be 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 ▌ provided that 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 of management, or a transfer of class. However, in the case of a change of management, or transfer of class, the Member State may, after taking account of inspections previously carried out in respect of 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, exempt the ***ro-ro passenger ship or high-speed passenger*** craft from the inspection required by the first sentence of this paragraph.

Article 6

Inspection report

1. On completion of any inspection carried out 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. Where the deficiencies are clearly hazardous to ***health or*** safety or ▌ pose an immediate danger to ***health or*** life, the ro-ro ***passenger ship*** or high-speed passenger craft, its crew and passengers, the ***competent authority of the*** Member State shall ensure that the ro-ro ***passenger ship*** or high-speed passenger craft is subject to an order prohibiting its departure (‘a prohibition of departure order’). The master shall be provided with a copy of that order.

3. The prohibition of departure order shall not be lifted until the deficiency has been rectified and 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 or craft can, subject to any necessary conditions, proceed to sea or resume operation 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 ***competent authority of the*** Member State may ***agree to*** allow the ship or craft to proceed to ***an*** appropriate repair yard ▌ where the deficiency can 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 ***competent authority of the*** Member State may suspend the inspection of that ***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 no longer poses an immediate danger to the life of its crew and passengers or to ensure that it complies with the relevant requirements of applicable international conventions.

6. Where the ***competent authority of 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 whether to impose or to lift 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 issued by the ***competent authority of 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. The ***competent authority of the*** Member State 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 updated accordingly without delay.

Article 9

Costs

1. Where the inspections referred to in Articles 3 and 5 confirm or reveal deficiencies warranting a prohibition of departure order, 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 shall have similar functionalities to that database***.

2. Member States shall ensure that the information related to inspections carried out in accordance with this Directive, including information concerning 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 to Directive 2009/16/EC shall apply *mutatis mutandis*.

3. Member States shall ensure that the information transferred to the inspection database is validated for publication purposes within 72 hours.

4. The Commission shall ensure that the inspection database makes it possible to retrieve any relevant data concerning the implementation of this Directive based on 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 provided for in this Directive and in Directive 2009/16/EC.

Article 11

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for 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 to this Directive 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 working conditions or to the marine environment, or to avoid 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 ▌.

Those delegated acts 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 such an 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 13

Exercise of the 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 for ***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 of 13 April 2016 on Better Law-Making.

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.

Article 14

Amendments to Directive 2009/16/EC

Directive 2009/16/EC is amended as follows:

(1) in Article 2, the following points 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 ***craft*** as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, in its up-to-date version, and carrying 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; "

▌

(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.";

(3) in Article 13, the introductory phrase 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:"

(4) the following Article 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 for inspections*** in accordance with ***the time frame and other requirements set out*** in Annex XVII.

▌

2. 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 ▌.

3. When a ro-ro ***passenger ship*** or high-speed passenger craft has been subject to an inspection ***in accordance with Annex*** XVII, such inspection shall be recorded ▌ in the inspection database***,*** and ***shall 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, provided for in Article 5.***

4. Article 9(1), Article 11(a) and Article 14 shall not apply to ro-ro passenger ships and high-speed passenger craft on a regular service inspected under this Article.

5. The competent authority shall ensure that the ro-ro passenger ships or high-speed passenger craft that are 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 3B(c). Inspections carried out under this paragraph shall not affect the inspection interval provided for in paragraph 2 of Annex XVII.

6. The inspector of the competent authority of the port State may agree to be accompanied, during an inspection of a ro-ro passenger ship or high-speed passenger craft, by a port State inspector of another Member State acting as an observer. 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.";

(5) in Article 15, paragraph 3 is deleted;

(6) 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 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 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 to the situations described in Article 21(6).

The refusal of access shall be 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.";

▌

(7) The following Annex is added:

"Annex XVII

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

1.1. Before a ro-ro passenger ship or high-speed passenger craft starts to operate on a regular service covered by this Directive, Member States shall carry out an inspection, in accordance with Article 3(1) of Directive **(EU) 2017/…** [*+]*, to ensure that that ro-ro passenger ship or high-speed passenger craft fulfils the necessary requirements for the safe operation of a regular service.*

[+] OJ: please insert the reference to the Directive contained in this document.

1.2. When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the Member State concerned may take into account inspections carried out within the last eight months by another Member State in respect of that ro-ro passenger ship or high-speed passenger craft for operations on another regular service covered by this Directive, provided that the Member State is satisfied in every case that those previous inspections are relevant to the new operational conditions and that during those inspections the necessary requirements for the safe operation of a regular service were fulfilled. The inspections provided for in point 1.1 do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.

1.3. Where, due to unforeseen circumstances, there isan urgent need for the rapid introduction of a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and point 1.2. is not applicable, the Member State may allow the passenger ship or craft to start operating provided that the following conditions are met:

(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 (EU) **2017/…** [+] *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 (EU) **2017/…** [+] *and of Commission Regulation (EU) No 428/2010** as applicable; and*

[+] OJ: please insert the reference to the Directive contained in this document.

(b) an inspection during a regular service. This inspection shall cover the items listed in Annex III to Directive (EU)* 2017/… [+] *and* what, in *the professional judgment of the inspector, constitutes a sufficient number of the items listed in Annexes I and II to Directive (EU)* 2017/… [+]*, 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 point 2, the ro-ro passenger ship or high-speed passenger craft shall be considered to be Priority I.

4. An inspection in accordance with point 1.1. shall be considered to be an inspection for the purposes of point 2(a) of this Annex.

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* Directive (EU) 2017/…of the European Parliament and of the Council of…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 and repealing Council Directive 1999/35/EC (OJ L….).

** Commission Regulation (EU) No 428/2010 of 20 May 2010 implementing Article 14 of Directive 2009/16/EC of the European Parliament and of the Council as regards expanded inspections of ships (OJ L 125, 21.5.2010, p. 2).".

[+] OJ: please insert the reference to the Directive contained in this document.

Article 15

Repeal

Directive 1999/35/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive and shall ***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 by... [9 years after the date of entry into force].

Article 17

Transposition

1. By ... [***24** months after the date of entry into force*], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

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

   When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

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 ...,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

SPECIFIC REQUIREMENTS FOR VESSELS IN REGULAR SERVICE

(as referred to in Articles 3 and 5)

The following shall be verified:

1. that 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. that 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. that 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. that 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. that the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;

6. that 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. that 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 and that in preparing the voyage plan the guidelines set out in IMO Assembly Resolution A.893(21) of 25 November 1999 "Guidelines for voyage planning" are taken fully into account;

8. that 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 II

PROCEDURES FOR INSPECTIONS

(as referred to in Articles 3 and 5)

The inspections shall ensure that statutory requirements issued by or on behalf of the flag State, in particular those relating to construction, subdivision and stability, machinery and electrical installations, loading and stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods, radiocommunications and navigation are fulfilled. For that purpose, the inspections shall include:

– 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. 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 whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel.

3. Certificates of competency 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 Council[10].

[10] 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 III

PROCEDURES FOR CARRYING OUT INSPECTIONS DURING A REGULAR SERVICE

(as referred to in Article 5)

When carrying out inspections during a regular service, the following shall be checked:

1. Passenger information

That the number of passengers for which the ro-ro ***passenger ship*** or high-speed passenger craft ("the ship") is certified is not exceeded, and that the registration of passenger information complies with Council Directive 98/41/EC[11]. 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.

[11] 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).

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.

3. *Security for sea*

That 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 is followed. 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*

That the form of routine safety announcements and the posting of instructions and guidance on emergency procedures occurs in the appropriate language or languages. 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*

That the log book is examined 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 Council[12] 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.

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12 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).

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.

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

That an efficient patrol is being maintained so that any outbreak of fire may be readily detected. This should include special category spaces where no fixed fire detection and alarm system is fitted. Those spaces may be patrolled as indicated in point 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 if the passenger and crew member do not share a common language;

(c) the possible need to communicate during an emergency by 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) whether 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

That a working language has been 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 can 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

That means of escape, including escape routes, are marked, in accordance with the applicable requirements, and lighted, from both the main and emergency sources of power. That measures are taken to keep vehicles clear of escape routes where those escape routes 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.

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17. Engine room cleanliness

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

18. Garbage disposal

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

19. Planned maintenance

That all companies 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. That there are plans in place for periodically checking all items so as to maintain safety standards at the highest level. That there are procedures 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. That periodic checking of the operation of the inner and outer bow door closing arrangements includes 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.

20. 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. It is necessary to check 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.

ANNEX IV

CORRELATION TABLE

Directive 1999/35/EC	This Directive
Article 1	–
Article 2, points (a), (b), (d), (e), (f), (g), (h), (j), (m), (o), (r)	Article 2, points (1), (2), (3), (4), (6), (7), (8), (9), (10), (11), (12)
Article 2, points (c), (i), (k), (l), (n), (p), (q), (s)	–
Article 3	Article 1
Article 4	–
Article 5, point (1)(a)	Article 3
Article 5, points (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

Directive 1999/35/EC	This Directive
Article 10(1)(a), (b), (c),	Article 7
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
▌	▌