Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (Text with EEA relevance)

DIRECTIVE (EU) 2017/2110 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 November 2017

on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC

(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[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

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[(3)] 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.

(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

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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[(4)] 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 6-monthly intervals. If the vessel is in service, those consecutive inspections should be no less than four and no more than 8 months apart.

(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[(5)]. 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.

(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 7 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 shipsand 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[(6)].

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).

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 3 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 21 December 2019 the total number of vessels and the number of ro-ro passenger ships and high-speed passenger craft calling at their ports during the 3-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 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 SOLAS 74, and carrying more than 12 passengers;

(3) ‘SOLAS 74’ 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 SOLAS 74 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 SOLAS 74 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 a Member State to carry out the inspections provided for in this Directive, who is responsible to that competent authority and who fulfills the minimum criteria specified in Annex XI to Directive 2009/16/EC;

(13) '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 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: