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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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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 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

{SWD(2016) 189 final}

{SWD(2016) 190 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Reasons for and objectives of the proposal

In the spirit of the Commission's REFIT and Better Regulation agenda and as an immediate follow-up to the fitness check on EU passenger ship safety legislation¹, the Commission puts forward a set of proposals to bring about the identified simplification potential.

The objectives of this revision are to simplify and streamline the existing EU passenger ship safety regulatory framework, in order to (i) maintain EU rules where necessary and proportionate; (ii) ensure their correct implementation; and (iii) eliminate potential overlap of obligations and inconsistencies between related pieces of legislation. An overarching objective is to provide for a clear, simple and up-to-date legal framework that is easier to implement, monitor and enforce, increasing thus the overall safety level.

Council Directive 1999/35/EC² provides for a number of types of inspection addressing particular safety characteristics of ro-ro ferries and high-speed craft (HSC). These address specific risks related to undivided vehicle decks giving rise to stability and fire vulnerabilities, very intense activity, the risks of cargo shift, water-tightness issues, hoistable ramps and wear & tear.

Notwithstanding the fact that the special inspection regime for these vessels remains necessary, the requirements of this Directive no longer match the realities. The situation today is significantly different compared to almost 20 years ago when Directive 1999/35/EC was adopted. At that time, the EU had 15 Member States and there were a significant number of ro-pax and HSC trading regularly between EU and third States. In addition, since then, the port State control regime has been strengthened, especially after Directive 2009/16/EC of the European Parliament and of the Council³ came into force, establishing a risk-based inspection regime and including a minimum number of inspections on high risk ships that Member States must carry out.

Today, the vast majority of Member States combine or replace some of the inspections required under Directive 1999/35/EC with either flag State surveys or port State control inspections. This practice renders the implementation and enforcement of this Directive problematic, given the different scope of these inspections and regulatory overlaps. In particular, the legal framework allows for a port State control inspection to be replaced by a Directive 1999/35/EC survey. However, given that the scope of Directive 1999/35/EC survey does not include all elements covered by the port State control, this overlap in fact creates a regulatory gap.

It is therefore proposed to update, clarify and simplify the existing survey requirements for ro-ro ferries and HSC while maintaining the same level of safety and key delivery mechanisms. This is fully in line with the Commission's REFIT programme and aims to further rationalise

¹ The results of which have been reported to the European Parliament and the Council on 16 October 2015 (COM(2015)508).

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).

³ 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).

the inspection effort of national administrations and to maximise the time in which the ship can be commercially exploited.

In this vein, in order to ensure clarity and coherence, the proposal repeals the current Directive and replaces it with a new Directive. It also includes ancillary changes to Directive 2009/16/EC.

1.2 Consistency with existing policy provisions in the policy area

The proposal is fully consistent with the simplification proposals amending Directive 2009/45/EC of the European Parliament and of the Council⁴ and Council Directive 98/41/EC⁵. It ensures consistency with Directive 2009/16/EC by including ancillary changes amending thereof. These ancillary changes are strictly limited to those necessary to ensure coherence with the present proposal and by no means impact on the forthcoming evaluation of Directive 2009/16/EC. The proposal is fully in line with the fitness check recommendations and the 2011 White Paper for the future of transport⁶ that recognised the need to modernise the current EU passenger ship safety legislative framework.

1.3 Consistency with other Union policies

The proposal delivers on the Commission's Better Regulation agenda by ensuring that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political, societal and technological developments. It also delivers on the goals of the 2018 Maritime Transport Strategy⁷ by ensuring quality ferry services in regular intra-EU passenger transport.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1 Legal basis

Given that the proposal replaces the current Directive, the legal base remains Article 100(2) TFEU (ex Article 80(2) TEC), providing for measures in the field of sea transport.

2.2 Subsidiarity

On request of the Member States⁸, the EU passenger ship safety legislation has been mainly modelled and shaped on the international requirements and in reaction to a number of major accidents (e.g. the accidents with the Herald of Free Enterprise, the Estonia). Most Member States are concerned as flag States as well as port States.

⁴ 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).

⁵ 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).

⁶ White Paper 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM/2011/0144).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategic goals and recommendations for the EU's maritime transport policy until 2018 (COM/2009/0008).

⁸ Council Resolution of 22 December 1994 on the safety of ro-ro passenger ferries, (94/C 379/05), O.J. No C379 of 31.12.94, p.8.

Although common rules have been adopted at EU level for passenger ships, including ro-ro ferries and HSC sailing on domestic voyages, this is not the case for international journeys where international conventions apply. International conventions allow for considerable derogation possibilities and divergent interpretations of the safety standards. Passengers travelling in the EU have the right to expect the same level of safety irrespective of the type of ships or service they are using.

In the absence of an enforcement mechanism at international level, the EU survey regime applicable to both domestic and international passenger ships remains a pre-requisite for maintaining a high standard of safety of life for passenger ships and eliminating substandard shipping. It also guarantees that competition takes place on an equal footing in EU waters for all operators irrespective of their nationality or the flag their ships and craft fly and without a distinction between international and domestic journeys. Therefore, harmonised conditions for the operation of ro-ro ferries and HSC to and from EU ports and common safety level could not be achieved by unilateral action at the level of Member States.

2.3 Proportionality

In view of the latest technological and legal developments, the proposal to clarify existing requirements, remove overlaps and outdated concepts, is considered as the only proportionate and coherent option. It ensures that the current high level of safety is not compromised and allows for the better use of resources, better targeting and clearer safety requirements.

In accordance with the principle of proportionality, a Directive remains to be considered as the most suitable form for achieving the identified objectives. It establishes common principles and a harmonised level of safety, ensures the enforcement of the rules, but leaves the choice of practical and technical procedures to be applied to each Member State. In doing so, it leaves the responsibility to each Member State to decide on the implementation tools which best fit its internal system. A Directive also ensures that the simplification objective of this proposal is achieved to the maximum extent possible.

2.4 Choice of the instrument

In order to ensure view of clear and consistent legal drafting, the most adequate solution was found to be the proposal for a new Directive replacing the existing one. Alternative option of proposing a set of amendments to the current Directive was discarded on the basis of the significant number of changes and their type to be brought to the current Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1 Ex-post evaluations/fitness checks of existing legislation

The fitness check showed that the key objectives of the EU passenger ship safety legislation related to passenger safety and internal market are being overall met and remain highly relevant. The EU passenger ship safety legal framework resulted in a common safety level for passenger ships within the EU and a level playing field between operators as well as increased transfer of ships between Member States. The fitness check also showed that there is scope for further enhancing the level of safety as well as the efficiency and proportionality of some of the regulatory requirements. Recommendations to simplify, clarify and repeal a number of ambiguous, outdated or overlapping requirements have been made in a number of areas:

- (a) Avoid overlaps between the specific surveys under Directive 1999/35/EC and the expanded inspections provided for under Article 14 of Directive 2009/16/EC and Commission Regulation (EU) No 428/2010.
- (b) Avoid overlaps between the specific surveys under Directive 1999/35/EC and the annual flag State surveys provided for in the Directive 2009/21/EC (concerning international voyages) and Directive 2009/45/EC (concerning domestic voyages).
- (c) Eliminate the redundant concept of the host state provided for under Directive 1999/35/EC (while retaining the possibility for joint inspections) and replace the term "survey" by "inspection".
- (d) Clarify that the time period between the two annual inspections of ro-pax vessels in Directive 1999/35/EC which are meant to take place at regular, six monthly intervals.

3.2 Stakeholder consultations

Given the technical nature of the envisaged proposals, a targeted consultation has been chosen as the most adequate tool. National experts have been consulted in the framework of the Passenger Ship Safety Expert Group. A workshop was organised where the Member States as well as industry and passenger associations were invited to participate. The envisaged measures were presented on numerous occasions. In addition, the roadmap published on the Europa website⁹ allowed all stakeholders to provide feedback by means of an online response form.

The consultation summary as well as detailed feedback on comments raised during the consultation process is provided in the Staff Working Document accompanying the proposal. The envisaged simplification measures were supported by the large majority of national experts, albeit a number of comments have been made with respect to exact wording of some of the proposals. All suggestions have been therefore carefully reviewed and proposals amended as appropriate. In addition, some experts raised questions concerning practical and technical implementation aspects, which have been addressed in the Staff Working Document accompanying the proposal and are embedded in the Implementation Plan.

Stakeholders from industry insisted that the key principles of the current legal framework remained unchanged while the passenger association called for upgrading the safety level and warned against its dilution. The proposal therefore ensures that the existing level of safety is maintained and, to the extent possible within the simplification framework, increased (e.g. by clarifying that the regularity of the two annual inspections under the current Directive is meant to take place at spaced out, six monthly intervals).

3.3 Collection and use of expertise

This review builds primarily on the data collected during the fitness check process as reported in the Commission Staff Working Document 'Adjusting course: EU Passenger Ship Safety Legislation Fitness Check', adopted on 16 October 2015¹⁰.

In addition to the data and consultation carried out in the framework of the fitness check, the preparation of this simplification proposal necessitated an input from technical and legal experts regarding the concrete formulation of technical definitions and a clear legal drafting.

⁹ http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm.

¹⁰ SWD(2015)197.

This expertise was gathered internally, in cooperation with the European Maritime Safety Agency (EMSA) and the Passenger Ship Safety Expert Group. It is reported on in the Staff Working Document accompanying the proposal.

3.4 Impact assessment

The proposal is an immediate follow-up to the fitness check that identified the issues for simplification in detail and assessed the simplification potential. As highlighted in the roadmap, the envisaged measures are either not expected to generate any significant impacts (i.e. beyond those that are non-measurable such as legal clarity, certainty or simplicity) or no materially different solutions have been identified. In line with the Commission's Better Regulation Guidelines, a fully-fledged impact assessment has not been carried out.

Nonetheless, the simplification proposal is accompanied by a Commission Staff Working Document that recalls the recommendations of the fitness check and explains the rationale of the proposed solutions from the technical as well as legal perspective. It includes a summary and a feedback on the stakeholder consultation carried out in support of this initiative. An implementation plan is also attached.

3.5 Regulatory fitness and simplification

To ensure that the existing legislation is fit for purpose is the main objective of this proposal. Its simplification potential primarily consists of non-measurable impacts such as legal clarity, certainty and simplicity. The main quantified element relates to the removal of overlaps and inconsistencies between the specific surveys under the current Directive, the expanded port State control inspections and the annual flag State surveys. The envisaged simplification will not only close the identified regulatory gap but is also expected to further rationalise the inspection effort of national administration and maximise the time in which the ship is commercially exploited.

The maximum combination potential has been estimated at ca. EUR 900.000 (i.e. reduction of ca. 670 self-standing surveys under this Directive per year for the entire EU, if the same ships continued in service as today), part of which has been already realised in practice by combining the various kind of inspections. Besides these monetary estimates, there is a significant burden for all the stakeholders related to the complexity of these inspection regimes, overlapping requirements spread across different pieces of legislation, expressed in different terms etc. This makes the implementation, monitoring and enforcement unnecessarily burdensome for all the parties involved.

3.6 Fundamental rights

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

5. OTHER ELEMENTS

5.1 Implementation plans and monitoring, evaluation and reporting arrangements

The proposal is accompanied by an implementation plan that lists the actions needed to implement the simplification measures and identifies the main technical, legal and time-related implementation challenges.

Adequate monitoring and reporting arrangements have been identified, without creating new reporting obligations and administrative burdens. The key information on fleet, accidents and compliance will be collected with the assistance of EMSA, the inspection database (THETIS), Passenger Ship Safety Expert Group and on the basis of the European Marine Casualty Information Platform (EMCIP) database. Given that the full cycle of the envisaged EMSA implementation visits is estimated to last 5 years, the evaluation cycle of the EU passenger ship safety legislation should be set at 7 yearly intervals.

5.2 Explanatory documents

Explanatory documents are not required as the simplification measures are not of substantial or complex nature.

5.3 Detailed explanation of the specific provisions of the proposal

Scope and definitions

Article 1 delineates the scope of the Directive excluding those vessels subject to port State control inspections carried out in accordance with Directive 2009/16/EC. As a result, the scope is confined to ships providing regular ro-ro ferry 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 that of the Member State in question.

Article 2 removes a number of redundant definitions and references such as "passenger", "host state", "international voyages", "exemption certificate". It also deletes the reference to the investigation of marine casualties which is now covered by Directive 2009/18/EC of the European Parliament and of the Council¹¹. The definitions of a number of other concepts are updated to take account of changes in EU legislation or at the international level (IMO) and to ensure that definitions are brought into line with those found in Directive 2009/16/EC.

Pre-commencement inspections

Articles 3 and 4 provide for system of ship (rather than company) based inspections prior to the commencement of a regular service. The vessel must undergo an inspection in accordance with Annex II and a number of safety management issues set out in Annex I must also be verified. Article 4 provides for situations where a vessel has recently been inspected or is moved from one service to another with similar characteristics. The word "inspections" rather than "surveys" is used throughout the text as this more accurately reflects the type of regulated activity.

¹¹ Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector (OJ L 131, 28.5.2009, p. 114).

Regular inspections, inspection reports, prohibitions of departure, appeal and costs

Article 5 stipulates that ships falling within the scope of the Directive are inspected twice per year with a certain time-lag between inspections and that one of these inspections should be an in-service inspection during a regular crossing. It is also provided that the Member State can, if they wish, combine the inspection with a flag State survey which would have to be carried out in respect of a vessel on a yearly basis. This should result in a reduced burden on the administration as well as on the ship-operator.

In Articles 6, 7, 8, 9, 10 and 11, the provisions relating to the inspection reports, prohibitions of departure, appeals, costs, the inspection database and penalties are all brought into line with those provided in Directive 2009/16/EC. While Directive 2009/16/EC does not provide for a prohibition of departure order, this is inspired by the detention order in port State control.

Amendment procedure

Articles 12 and 13 are brought in line with the provisions of the Treaty on the functioning of the European Union concerning the exercise of the Commission powers in relation to delegated acts.

Amendment to Directive 2009/16/EC

Article 14 provides for ancillary amendment to Directive 2009/16/EC to ensure that the current content and frequency of ro-ro ferries and high-speed passenger craft inspections is maintained.

Repeal

Article 15 provides that Directive 1999/35/EC is repealed and refers to the corresponding correlation table in Annex IV.

Evaluation provisions

Article 16 specifies the evaluation provisions.

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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 Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union legislation relating to a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft (HSC) 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 Council¹⁴ 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 check¹⁵ 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.

¹² OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ 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).

¹⁵ COM(2015)508.

- (3) Most Member States already combine mandatory surveys for the safe operation of regular ro-ro ferries 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 can be commercially exploited, 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 ferry 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.
- (4) The concept of the 'host State' was introduced by Council Directive 1999/35/EC¹⁶ 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 certain interval between them, the REFIT fitness check demonstrated that this is not always the case. To remove the ambiguity of that requirement and to ensure a common safety level, it should be clarified that the two annual inspections should take place at regular, approximately six monthly intervals.
- (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 ferries and HSC 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 ro-pax surveys as currently provided for in Directive 1999/35/EC.
- (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 ferries and high-speed passenger craft inspections is maintained. Specific provisions for inspections and verifications of ro-ro ferries and high-speed passenger craft on regular service eligible for port State control should be therefore transferred to Directive 2009/16/EC.

¹⁶ 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).

- (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.
- (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:

Article 1

Scope

1. This Directive shall apply to ro-ro ferries and high-speed passenger craft operating on a regular service between a port of 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 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 Council¹⁷.
2. Member States may apply this Directive to ro-ro ferries and high-speed passenger craft operating on a regular service on domestic voyages in sea areas in which ships of other classes may operate other than those referred to in paragraph 1.

Article 2

Definitions

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

- (1) 'ro-ro ferry' means a passenger vessel 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 high speed craft as defined in Regulation X/1 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;

¹⁷ 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).

- (5) 'regular service' means a series of ro-ro ferry 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 included in a list established in accordance with Article 4(2) of Directive 2009/45/EC;
- (7) 'certificates' means:
 - (a) for ro-ro ferries 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 ferries 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 ferry 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) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council¹⁸;
- (11) 'company' means the owner of the ro-ro ferry 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 ferry or the high-speed passenger craft from its owner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code;
- (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.

¹⁸

Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 47).

Article 3

Pre-commencement inspections

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service covered by this Directive, 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 ferry or high-speed craft fulfils the necessary requirements for safe operation of a regular service.
2. The pre-commencement inspection can be dispensed with if the vessel has, within the previous six months, been subject to an annual flag State survey or inspection by a Member State wherein the relevant procedures and guidelines for surveys as specified in IMO Resolution A 1053(27) Consolidated (Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2011) or procedures designed to achieve the same goal are followed.
3. The pre-commencement inspection shall be carried out by an inspector. The flag State survey or Member State inspection referred to in paragraph 2 shall be carried out by an inspector or by a recognised organisation authorised by the flag State to carry out surveys or inspections with the purpose of ensuring that all the requirements of this Directive are complied with.
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. When a ro-ro ferry or high-speed passenger craft is to be engaged on another regular service, the Member State shall take into account inspections and surveys previously carried out for that ro-ro ferry 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 ferry 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 ferry 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 ferry or craft to start operating provided that:

- (a) a visual inspection and document check raises no concerns that the ro-ro ferry 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 five months but not later than seven months following the inspection. This inspection shall cover the items listed in Annex III and sufficient number of the items listed in Annexes I and II to ensure that the ro-ro ferry 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 this Article.

2. The inspection referred to in 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 or inspection wherein the relevant procedures and guidelines for surveys as specified in IMO Resolution A 1053(27) Consolidated (Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2011) 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 ferry 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 ferry or high-speed passenger craft, and provided that the safe operation of the ferry or craft is not affected by this change or transfer, dispense the ferry or 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 safety or health or which pose an immediate danger to life, the ro-ro ferry or high-speed passenger craft, its crew and passengers the Member State shall ensure that the ro-ro ferry 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 or until 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 ferry or high-speed passenger craft or other ships.
4. If such deficiency cannot be readily rectified in the port in which the deficiency has been confirmed or revealed, the Member State may allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it may be readily rectified.
5. In exceptional circumstances, where the overall condition of a ro-ro ferry or high-speed passenger craft is obviously substandard, the Member State may suspend the inspection of that ferry or craft until the company takes the steps necessary to ensure that the ro-ro ferry 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 ferry 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 Member State may allow a ro-ro ferry 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 ferry 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 or of a request made by the company, 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 which will contain all the information required for the implementation of the inspection system provided for by this Directive or further enhance the inspection database referred in Article 24 of Directive 2009/16/EC.
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 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. The Commission is empowered to adopt delegated acts in accordance with Article 13, amending this Directive in order to exclude from its scope any amendment to the international instruments referred to in Article 2 only if, on the basis of an evaluation by the Commission, there is a manifest risk that the international amendment will lower the standard of maritime safety, of prevention of pollution from ships or of protection of shipboard living and working conditions established by Union maritime legislation, or be incompatible with the latter.

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 for an indeterminate period of time from [the date of entry into force].
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 excluding from the scope of this Directive any amendment to the international instruments in accordance with Article 12(3) 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 28 are inserted:
 - "25. 'ro-ro ferry' means a passenger vessel 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 high-speed craft 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 ferry 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. 'pre-commencement inspection' means an inspection on a ro-ro ferry or high-speed passenger craft falling within the scope of this Directive prior the commencement of a regular service to verify that the requirements laid down in Article 3 and Annexes I and II to Directive [XXXX] are complied with.";
- (2) in Article 3(1), the following subparagraph is added:

"This Directive shall also apply to inspections of ro-ro ferries 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) the following Article 14a is inserted:

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

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service covered by this Directive, Member States shall carry out a pre-commencement inspection, in accordance with Article 3 of Directive [XXXX], to satisfy themselves that the ro-ro ferry or high-speed passenger craft fulfils the necessary requirements for safe operation of a regular service and to verify that the requirements laid down in Annex I of Directive [XXXX] are complied with.
2. Ro-ro ferries and high-speed passenger craft shall in every twelve month period be subject to two port State control inspections. One of those inspections shall be an inspection during a regular service which can take either of the following forms, depending on the Member State's choice:
 - (a) an expanded inspection; or
 - (b) an inspection covering the items listed in Annex III and the sufficient number of the items listed in Annexes I and II of Directive [XXXX] to satisfy the Member State that the ferry or craft continues to fulfil all the necessary requirements for safe operation.
3. Member States shall, when planning inspections of a ro-ro ferry or high-speed passenger craft, take due account of the operational and maintenance schedule of the ferry or craft. A Member State may agree to carry out an inspection of a ro-ro ferry or high-speed passenger craft at the request of another Member State.
4. When a ro-ro ferry or high-speed passenger craft has been subject to an inspection, such inspection shall be recorded as an expanded inspection, in the inspection database and 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, to the extent that all the items referred to in Annex VII to this Directive are covered.";
- (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) in Article 22, paragraph 2 is replaced by the following:

"2. When the required professional expertise cannot be provided by the competent authority of the port State, the inspector of that competent authority may be assisted by any person with the required expertise.

The inspector of the competent authority of the port State may, during an inspection of a ro-ro vessel or high-speed passenger craft, be accompanied by a port State inspector of another Member State, or if requested by the company by a representative of the flag State of the vessel."

Article 15

Repeal

Directive 1999/35/EC is repealed.

References to the repealed Directive shall be construed as references to this Directive and 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 [12 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 [12 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.

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