Training on Directive (EU) 2017/2110

Need for a recast of Directive 1999/35/EC

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Why a recast of Directive 1999/35/EC

Fitness checks

- **Relatively new tools, linked to COMM's *Better Regulation* agenda**

- **Keep current regulations fit for purpose**

Identify excessive burdens, overlaps, gaps, inconsistencies, obsolete measures which appeared over time

and to help to identify the cumulative impact of legislation

Findings → basis for drawing policy conclusions on the future of the relevant regulatory framework

… possible REFIT (regulatory fitness) …

Why a recast of Directive 1999/35/EC

REFIT: **Ro-Ro Ferry & HSC Directive**

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'

Safety Rules & Standards for Pass. Ships

➔ Fitness check → REFIT

Directive 2009/45/EC
- safety rules & standards for pass. ships

Directive 2003/25/EC
- specific stability requirements ro-ro passenger ships

Directive 1998/41/EC
- registration of pers. sailing on board passenger ships operating to or from ports of MSs

and

Directive 1999/35/EC
- **… … … … …**

Why a recast of Directive 1999/35/EC

Background of REFIT Directive 1999/35/EC *)

'on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services'

**) Commonly known as RoPax/HSC Dir. or Dir. 99/35*

1) RoPax Directice adopted almost 20 years ago (29 April 1999)

In 1999 EU only 15 MSs *[AT, BE, DK, FI, FR, DE, GR, IE, IT, LU, NL, PT, ES, SE, UK]*
[last 3 joined in 1995 (AT,FI,SE)]

↳ Significant number of RoPax/HSC trading ***between EU and third States***

Situation today significantly different

2004 - 2013, additional 13 States joined EU (28) *[BG, HR, CY, CZ, EE, HU, LV, LT, MT, RO, PL, SK, SI]*

2021 1 State left (27) *[UK]*

⇨ Today ***most voyages intra EU***

2) Progress PSC regime → strengthened; especially after Dir. 2009/16/EC (Risk based insp.)

[95/21/EC, amended by 2006/106/EC - 2009/16/EC & Reg. 428/2010 replaced 95/21/EC]

Dir. 1999/35/EC no longer match realities; necessary to update regime to address changes in EU

↓

Directive (EU) 2017/2110 adopted 15 Nov. 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**'*

Requirements of Directive (EU) 2017/2110

Directive (EU) 2017/2110

'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'

➔ **Transposition by 21 Dec. 2019 AND MSs shall apply the measures from 21 Dec. 2019**

General - RoPax / HS pass. Craft in regular service:

- **in domestic trade, and**
  ships calling only FS ports within EU ⇘ ⇗ **fall under Dir. 2017/2110**
- **falling under PSC → inspect in accordance PSC Dir. 2009/16/EC**

PSC Dir. includes now specific provisions RoPax / HS pass. Craft operating in regular service

2017/2110 Art. 14 introduced:

- **various amendm. to PSC Dir. to aline for inclusion of these ships/craft**
- **new Art. 14a in PSC Dir.** *'Insp. RoPax / HS pass. Craft in regular service'*
  includes inter alia reference to new Annex XVII
  to determine eligible for insp./time frame and other requirements

Article 3 Pre-commencement inspections

(a) Verification with the requirements Annex I

8 points to be verified, mainly documents and procedures

(b) Inspection in accordance with Annex II to satisfy that the ships fulfills the necessary requirements for safe operation of a regular service

Several test to be carried out, checking of STCW requirements (same as the specific items required by an EI)

Article 4 Exceptions to the pre-commencement inspection obligation

1. **Not checking all items of Annex I and II relevant to a annual flag State survey or inspection if carried out in the previous 6 months**
2. **Taking into account previous inspections and surveys carried out under Directive (EU) 2017/2110**
4. **In case of rapid replacement and no previous inspections are available (paragraph 2 above cannot be applied)**
   - Visual inspection and document check raises not concern
   - Pre-commencement inspection within 1 month (Art. 3(1))

Article 5 Regular inspections

1. MS shall once in every 12-month period carry out:

(a) An inspection in accordance with Annex II* (in port)

(b) An inspection during a regular service covering Annex III and sufficient items of Annex I and II (at sea)

2. The inspection of point (a) can be carried out at the same time as the annual flag State survey

3. Each time an inspection acc. with Annex II if repairs, alterations and modifications of a major character has been done

(*Note: a pre-commencement inspection in acc. Art. 3 shall be considered as inspection for (a))

Article 5 Regular inspections

Frequency:

not be before 4 months but not later than 8 months after the previous inspection

Not required to have the following sequence

in port – at sea – in port

Requirement is to have an in port and an at sea in a 12 month period

Inspection details

- **Inspection report**
  - Contain information in line with Annex IX of Directive 2009/16/EC
  - To be uploaded in the database
  - Copy to master
- **Possible to prohibit the departure (PoD) (same as detention)**
- **Possible to suspend the inspection which results automatically in a prohibition of departure**
- **Company has right of appeal against PoD**
- **In case of PoD cost of inspection to be covered by the company**
- **MS have to apply penalties**

Article 14 Changes to 2009/2016/EC

Article 14 makes several changes to 2009/16/EC

- **Insertion of definitions for ropax, HSC pax and regular service to Article 2**
- **Amending the scope by adding ropax and HSC pax to Article 3**
- **Adding Article 14a to include inspection of ro-ro passenger ships and high speed passenger craft in regular service**
- **Amending the refusal of access requirement by deleting PoO from Article 16**
- **Adding Annex XVII**

Article 14a of Directive 2009/2016/EC

Article 14a sets that:

- Ropax and HSC have to be inspected with time frame set out in Annex XVII
- MS should take due account of the schedule
- Inspections in acc. with Annex XVII will be taken into account for Art. 10 (SRP), 11 (Frequency) and 12 (Selection) and for the fair share provided by Art. 5
- Art. 9(1) (72 ETA), 11(a) (periodic inspection) and 14 (EI) will not apply
- Inspections due to Art. 11(b) (additional inspection) will not reset the inspection interval
- Other MS can join the inspection as observers

Annex XVII of Directive 2009/2016/EC

Annex XVII sets that:

1.1 Pre-commencement inspections acc. to Art. 3(1) of (EU) 2017/2110 have to be carried out

1.2 If an inspection has been carried out in the last 8 months no pre-commencement would be required

1.3 In case of rapid replacement and no previous inspections are available (paragraph 1.2 above cannot be applied)

(a) Visual inspection and document check raises not concern

(b) Inspection acc. to Art. 3(1) of (EU) 2017/2110 within 1 month

Annex XVII of Directive 2009/2016/EC

2. Member States shall, once per year, but not before 4 months and not later than 8 months following the previous inspection, carry out:

(a) an inspection, including the requirements of Annex II to (EU) 2017/2110 and of Regulation (EU) No 428/2010;

(b) an inspection during a regular service. This inspection shall cover the items listed in Annex III of (EU) 2017/2110 and a sufficient number of the items listed in Annexes I and II of (EU) 2017/2110

3. If not inspected within 8 months the ship will be PI

4. Inspections due to 1.1 will count for 2(a)

Annex XVII of Directive 2009/16/EC

Frequency:

not be before 4 months but not later than 8 months after the previous inspection

Not required to have the following sequence

in port – at sea – in port

Requirement is to have an in port and an at sea in a 12 month period

(EU) 2017/2110 Article 1 Scope

3 Situations as example: Dir. 2017/2110 **or** Dir. 2009/16
Respectively *Flag State responsibility* **or** *Port State Control*

RoPax / HS pass. Craft operating:

(a) regular service between port of MS and port of third country

→ flag of vessel same as the MS

We could refer to these inspections as Directive (EU) 2017/2110 as it relates to ***Flag State responsibility***

Flag State = EU-MS R
↓
➢ Directive (EU) 2017/2110

Flag State = Third Country or
the flag of an EU MS other than EU-MS R
↓
➢ Directive 2009/16/EC

→ Port State Control!

(EU) 2017/2110 Article 1 Scope

RoPax / HS pass. craft operating:

(b) regular service in domestic voyages in sea areas in which *Class A* ships may operate

We could refer to these inspections as Directive (EU) 2017/2110 as it relates to ***Flag State responsibility***

EU-MS K: ro-ro pass. ships / high-speed pass. craft in regular service & domestic voyage. Sea areas in which Class A ships may operate.

Flag State = EU-MS K
↓
➢ Directive (EU) 2017/2110

Flag State = Third Country or the flag of an EU MS other than EU-MS K
↓
➢ Directive 2009/16/EC → ***Port State Control!***

CLASS A ships

REFIT

Dir. 2009/45/EC on safety rules and standards for pass. ships, **as amended by Dir. (EU) 2017/2108 – Art. 4**

- Pass. ships divided into **Class A, B, C and D** according to sea area they may operate
- "**Class A**" means a pass. ship engaged on domestic voyages in **Areas A, B, C and D**
- **Area A means a sea area outside of areas B, C and D**

Areas B, C and D are Areas with limitations; i.e. to max. nm from the coast line, resp. 20, 5 and 3nm

Areas C & D have further restrictions as to limitation to significant wave height

Domestic voyage means a voyage in sea areas from a port of a MS to the same or another port within that MS

(EU) 2017/2110 Article 1 Scope

RoPax / HS pass. craft operating:

(c) on a regular service in a MS where flag of vessel is different from that of the MS

We could refer to these inspections as Directive 2009/16/EC as it relates to ***Port State Control***

Flag State = EU-MS A, EU-MS B

or

Flag State = Third Country

- Directive 2009/16/EC → ***Port State Control!***

Directive (EU) 2017/2110 flag State inspection

Ro-ro passenger ship and high-speed passenger craft operating on a regular service

(a) between a port of a MS and a port of a third country
- flag of the vessel is the same as that of the MS in question -

(b) on domestic voyages in sea areas Class A ships may operate

Pre-commencement - Regular inspection

Pre-commencement inspection?
(before ro-ro pass. ship or high-speed pass. craft starts to operate on certain regular service)

No

Yes

Pre-commencement:

a) inspection of specific requirements; see **Annex I**

b) inspection that requirements for safe operation are fulfilled; see **Annex II**

Regular:

1. inspection, including requirements **Annex II**
   (Note: Pre-commencement inspection is considered equal)
2. inspection *during regular service* that requirements for safe operation continue to be fulfilled and covers the items listed in: - **Annex III**, and
   - **Annex I & II;** sufficient number of items (professional judgement)

Inspection report in THETIS-EU
Incl. deficiencies, if any, ASAP

Validate information transferred to THETIS-EU within 72 hrs

Actions

Ensure rectification of deficiencies, if any.

If deficiencies clearly hazardous } Prohibition of
In exceptional circumstances suspension of inspection } departure →

Costs relating to inspections for company - Penalty

Directive 2009/16/EC port State control inspection
Ro-ro passenger ship and high-speed passenger craft operating on a regular service
Pre-commencement - Regular inspection
Pre-commencement inspection?
(before ro-ro pass. ship or high-speed pass. craft starts to operate on certain regular service)
Yes
No
Pre-commencement:
a) inspection of specific requirements; see Annex I
b) inspection that requirements for safe operation are fulfilled; see Annex II
Directive 2009/16/EC
PSC inspection procedures are applicable;
initial-, more detailed-, and
as appropriate expanded inspection
Regular:
1. inspection, including requirements Annex II and Reg.(EU) No 428/2010 on expanded inspection
(Note: Pre-commencement inspection is considered equal)
2. inspection during a regular service that requirements for safe operation continue to be fulfilled and covers the items listed in: - Annex III, and
- Annex I & II; sufficient number of items (professional judgement)
Inspection report in THETIS incl. deficiencies, if any, ASAP
Validate information transferred to THETIS within 72 hrs
Actions
MS shall be satisfied that deficiencies, if any, are, or will be rectified
If deficiencies clearly hazardous: Detention, and if applicable } →
Refusal of access } →
Costs relating to inspections for company – Penalty

Requirements of Directive (EU) 2017/2110

European Maritime Safety Agency
EMSA Guidance on Directive (EU) 2017/2110

EMSA guidance on Directive (EU) 2017/2110

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

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Page 1 of 22

The guidance can be downloaded here: http://emsa.europa.eu/we-do/safety/ship-safety-standards.html

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European Maritime Safety Agency