

Opinion of the European Economic and Social Committee 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) 371 final — 2016/0172 (COD)]

(2017/C 034/30)

Rapporteur: **Jan SIMONS**

Consultation	European Parliament, 09/06/2016 Council of the European Union, 22/06/2016
Legal basis	Article 100(2) of the Treaty on the Functioning of the European Union [COM(2016) 371 final — 2016/0172 (COD)]
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	06/10/2016
Adopted at plenary	19/10/2016
Plenary session No	520
Outcome of vote (for/against/abstentions)	222/2/6

1. Conclusions and recommendations

1.1. The EESC welcomes as a whole the purposes of the Commission’s Regulatory Fitness and performance (REFIT) Programme with the overarching objective to provide for a clear, simple and consistent legal framework on passenger ship safety that is easier to implement, monitor and enforce, ensuring the overall safety level for passengers and the ship’s crews.

1.2. The EESC places great importance on having an EU inspection regime applicable to passenger ships operating both on domestic and/or international voyages maintaining an equal level playing field in EU waters for all passenger ships irrespective of their flag. Nevertheless, the EESC is of the opinion that the EU should primarily endeavour to maintain appropriate standards of maritime safety and marine environment protection at a global level, which in turn are applied to ships trading in EU waters.

1.3. The EESC considers that there is further need for clarification and for additional provisions under the new proposed directive in order to avoid any redundancy in inspections or impose unnecessary additional burden to Member State administrations, minimising a ship’s commercial operations or causing additional fatigue on crews. This includes the need for:

- Avoiding any potential redundancy in inspections between the new proposed directive and Directive 2009/16/EC on Port State Control;
- Appropriate coordination between Member State competent authorities in scheduling inspections.

1.4. Whilst the new proposed directive appropriately aims at reducing ship's crew fatigue, the EESC recommends that compliance with the minimum requirements for seafarers to work on board a ship, including medical and training certification covered by STCW (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers), is essential in terms of maritime safety. Such a compliance should be assured in accordance with the existing international conventions such as the 2006 Maritime Labour Convention which is implemented into EU law with Council Directive 2009/13/EC.

1.5. In light of the above, the EESC recognises that the amount of clarification provisions will require both Member States and shipping companies to adjust their current processes. Consequently, the EESC would therefore support the role of EMSA and the use of the existing Passenger Ship Safety Expert Group (PSS EG) to the Maritime Safety Group in order to facilitate the implementation and transposition processes in conjunction with the corresponding expert groups dealing with Port State Control inspections and National Single Window implementation.

1.6. The EESC has seven specific technical comments to make. For these, please see section 5 of this opinion.

2. Introduction

2.1. Europe's geographical configuration as a vast peninsula gives an indication of how crucial maritime transport services, including the carriage of passengers, are. More than 400 million people pass through EU ports every year, out of which 120 million are transported by domestic passenger ships. Hence the importance of ensuring the highest safety standards in EU waters, given that ship safety legislation has considerable implications, notably for the environment, labour laws, the mobility of EU citizens and the facilitation of trade in passenger vessels, since the latter meet the same standards across the EU.

2.2. Still etched in the collective memory — especially of those interested in shipping matters — are the tragic accidents of the deep sea ferries Herald of Free Enterprise and the Estonia, in 1987 and the night of 27 to 28 September 1994, respectively; the former was sailing out of Zeebrugge, Belgium, the latter out of Tallinn on course to Stockholm, foundering off the Finnish coast. The Herald of Free Enterprise hit a sandbank; 193 people were killed. In the Estonia, a record 852 people lost their lives. Cause: the bow doors through which people and vehicles are loaded and unloaded (roll-on-roll-off, hence the term RO-RO-ships) were not closed properly and ripped off in a heavy storm respectively. Consequence: the ships took on water and listed rapidly then capsized, all within half an hour.

2.3. Following the Estonia disaster, the International Maritime Organization adopted a series of amendments to the International Convention for the Safety of Life at Sea (SOLAS), including requirements to improve the stability of ro-ro ships when they are damaged.

2.4. However, incidents continue to occur, which has led Europe in the last two decades to introduce further rules for passenger ship safety, including some specific rules, such as the register of persons on board, alongside SOLAS on international journeys, which also cover journeys between two or more Member States, as well as many more EU rules for national journeys.

2.5. The proposals flow from the REFIT programme being carried out by the Commission in respect of this legislation on passenger ship safety. The abbreviation REFIT stands for Regulatory Fitness and Performance.

2.6. The aim was to simplify and streamline where possible existing European rules on passenger ship safety so as to:

— maintain EU rules only where necessary and proportionate;

— ensure correct, uniform implementation;

- eliminate overlaps and contradictions.

These aims reflect the EESC's recommendations concerning 'REFIT', as set out in the recent exploratory opinion (SC/044, 26 May 2016).

- 2.7. This coherent package of proposals serves to achieve these objectives.

The package on passenger ship safety includes proposals for reviewing nearly all European safety regulations on passenger ships, excluding of course the purely technical Directive 2003/25/EC on specific stability requirements for ro-ro passenger ships.

- 2.8. The package comprises the following 3 proposals:

- to limit and clarify the scope of Directive 2009/45/EC (technical standards for seagoing passenger ships on national routes);
- to improve and clarify reporting obligations arising from Directive 98/41/EC (on the registration of persons sailing on board passenger ships) in relation to other instruments (Directive 2010/65/EU on reporting formalities and Directive 2002/59/EC on the Community vessel traffic monitoring and information system), as well as removing overlaps with these areas;
- to clarify and simplify the EU system of surveys and inspections for ro-ro-ferries (ferries capable of transporting cars and trains as well as passengers) and high-speed passenger craft.

- 2.9. It is this last proposal that is the focus of this opinion.

3. Summary of the Commission proposal for an inspection system

3.1. The aim of the proposal is to clarify and simplify the EU system of surveys and inspections for ro-ro-ferries and high-speed passenger craft, which are currently carried out in accordance with Directive 1999/35/EC (mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services) and Directive 2009/16/EC (port State control).

3.2. The proposal is in line with Directives 2009/21/EC and 2009/45/EC (flag State surveys of seagoing vessels making international and domestic voyages, respectively). Here again, it appears that the directive's implementation varies from one Member State to another.

3.3. The proposal wishes to have the concept of 'host State' removed (under Directive 1999/35/EC, it is the host State or the State where the ship operates, under the flag of another country, that is responsible for inspecting ro-ro-ferries). Inspections are to be incorporated into the flag- and port-State control inspections. Finally, it is to be clarified when the 2 annual inspections stipulated in the current Directive 1999/35/EC should take place.

3.4. It is therefore proposed that Directive 2009/16/EC be amended and Directive 1999/35/EC repealed and that they be replaced with a new Directive. The key points of the new Directive are the following:

- to limit the scope of the directive 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;
- to remove a number of redundant definitions and references such as 'passenger', 'host state', 'international voyages', 'exemption certificate', and to delete the reference to the investigation of marine casualties which is now covered by Directive 2009/18/EC of the European Parliament and of the Council;
- to 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;
- to stipulate 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;

- to provide that Member States 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;
- to bring into line the provisions relating to the inspection reports, prohibitions of departure, appeals, costs, the inspection database and penalties with those provided in Directive 2009/16/EC;
- to align the directive with the provisions of the Treaty on the Functioning of the European Union concerning the exercise of the Commission's powers in relation to delegated acts;
- to amend Directive 2009/16/EC to ensure that the current content and frequency of ro-ro ferries and high-speed passenger craft inspections is maintained;
- to provide for assessment of the directive by the Commission.

4. General comments

4.1. The EESC welcomes as a whole the purposes of the Commission's Regulatory Fitness and performance (REFIT) Programme with the overarching objective to provide for a clear, simple and consistent legal framework on passenger ship safety that is easier to implement, monitor and enforce, ensuring the overall safety level for passengers and the ship's crews. Consistently, these REFITs and evaluations also complement the objectives of the European Maritime Transport Strategy COM(2009) 8 final to exploit the full potential of the growing demand for short-sea shipping and sea transport services for business and citizens in Europe.

4.2. As evidenced by the accident statistics, the existing regulatory framework has achieved a high level of passenger ship safety in EU waters. The EESC endorses the renewed emphasis placed on addressing specific safety-related characteristics of ro-ro ferries and high speed passenger craft through the proposal for this new directive and amending Directive 2009/16/EC. The REFIT outcome clarifies and simplifies the existing requirements under the current Directive 1999/35/EC surveys, the expanded port state control inspections and the annual flag state surveys, while maintaining the same level of safety for passengers travelling on ro-ro ferries and high speed passenger craft in regular service throughout the EU waters.

4.3. The EESC places great importance on having an EU inspection regime applicable to passenger ships operating both on domestic and/or international voyages maintaining an equal level playing field in EU waters for all passenger ships irrespective of their flag.

4.4. The EESC welcomes the fact that the envisaged simplification will not only provide further legal clarity but will equally further rationalise the amount of inspections to be conducted by national administrations and, at the same time, maximise the ship's commercial operations.

4.5. Since 2009, the New Inspection Regime (NIR) under the Paris MoU has been focusing on the performance of shipping by performing increased inspections for low standard ships and increased intervals for high standard ships. The EESC acknowledges the above NIR achievement, especially considering that administrative burden has been a growing concern for ships in short sea trade and that each additional inspection increases this burden.

4.6. The EESC stresses that compliance with the minimum requirements for seafarers to work on board a ship, including medical and training certification covered by STCW, is essential in terms of maritime safety and therefore should be assured in accordance with the existing international conventions such as the 2006 Maritime Labour Convention which is implemented into EU law with Council Directive 2009/13/EC. This directive has also amended the specific legislation for seafarers on working time, i.e. Directive 1999/63/EC aimed to protect the health and safety of seafarers by laying down minimum requirements with regard to working time. In parallel, Directive 1999/95/EC aims to improve safety at sea, combat unfair competition from third-country shipowners and protect the health and safety of seafarers on board ships using EU ports.

4.7. The EESC recognises that the amount of clarification provisions will require both Member States and shipping companies to adjust their current processes. Consequently, the EESC would therefore support the role of EMSA and the use of the existing Passenger Ship Safety Expert Group (PSS EG) to the Maritime Safety Group (permanent expert group on maritime safety set up by DG Mobility and Transport) in order to facilitate the implementation and transposition processes in conjunction with the corresponding expert groups dealing with Port State Control inspections and National Single Window implementation. The EESC welcomes the opportunity recently offered to stakeholder's organisations to take part in the PSS EG as such platforms of discussion, followed by the example of the European Sustainable Shipping Forum (ESSF), can prove very useful as it will bring together the European Commission, industry and NGO stakeholders and Member States competent authorities.

4.8. As for regular inspections under Article 5, it may happen that a regular ship subject to inspections under the scope of this proposed new directive may also be subject at the same time to port state control inspections carried out in accordance with Directive 2009/16/EC as amended by this directive through Article 14 on inspection of ro-ro ferries and high speed passenger craft in regular service. This proposed new directive should avoid, for the sake of rationalising, the potential redundancy in inspections between the two abovementioned directives.

4.8.1. Notwithstanding that the risk parameters in the current PSC system can imply that the ship is not eligible for an expanded PSC inspection at the time when this proposed new directive's inspection is scheduled, appropriate coordination between Member States will however be required in order to satisfy the time-lag between the two inspections as required under Article 5 § 1(b).

4.8.2. Under Article 10 of the proposed new directive, the Commission is requested to establish an inspection database. Clarification should be made whether such an inspection database will be maintained in parallel to the Paris MoU-EMSA THETIS system, and in particular how inspections performed under this new directive, will influence the ship risk profile under Paris MoU.

4.8.3. In referring to Article 1 § 1, clarification should be made on the definition of 'third State' whether it means non-EU Member State or both EU Member State and non-EU Member State. The EESC understanding is that 'third State' should be defined as a non-EU Member State only in order to avoid confusion with ro-ro ferries and high speed passenger crafts subject to Port State Control inspections under Article 14 of this new proposed directive.

4.9. The EESC believes that the EU has primarily the role of ensuring that any amendments to the international instruments referred to in Article 2 of this new proposed directive will maintain an appropriate standard of maritime safety and marine environment protection at a global level. Therefore, the EESC finds that the provisions on possible future deviation from international legislation as referred under Articles 12 and 13 of the new proposed directive should be used as a last resort and should entail, as appropriate, European action to ensure that any conflict between the Community maritime legislation and international instruments results eventually into a compatible solution at international level.

5. Specific comments

5.1. As per definition of 'regular service' under Article 2(5)(a) and Article 14 of the new proposed directive, the EESC suggests clarifying the definition as follows: '*according to publically available or planned list of times of departures and arrivals*'.

5.2. There are redundant and confusing requirements between the *Pre-commencement inspections* under Article 3 § 2 and *Exception to the pre-commencement inspection obligation* under Article 4 § 1. The EESC proposes merging these two paragraphs under a new Article 4 § 1 in order to refer consistently to the conditions for the ship to be dispensed with inspections provided that previous inspections or surveys of the ships are found satisfactory by the Member State. This new paragraph shall also refer to the pre-commencement inspections required for ro-ro ferries and high speed passenger craft under Directive 2009/16/EC as amended by Article 14 by the proposed new directive.

5.3. Whilst the proposed new directive establishes a procedure in case a replacement ro-ro ferry or high speed passenger ferry craft must be introduced rapidly following unforeseen circumstances (Article 4 § 3), the EESC proposes to have a dedicated procedure for a replacement ship for a limited time period, when paragraph 1 of Article 4 is not applicable, in case of scheduled maintenance of the ship on the regular service.

5.4. The regularity of the two annual inspections as required under Article 5 § 1(b) should be equally specified under Article 14a § 2 in order to ensure time wise a common safety level between this directive and Directive 2009/16/EC. Furthermore, the regularity of the two annual inspections which should be performed over a 12-month period is not specified for ships operating on seasonal service and should be further clarified.

5.5. The reference under Article 5 § 1(b) to the '*sufficient number of the items listed in Annexes I and II*' to be covered by the inspection during a regular service is confusing. The EESC suggests that the inspector shall use his professional judgement to decide which items must be inspected, and to what extent, in order to check overall condition in these area and avoid duplication of items that may have been already mandatory checked under other international regulations. It is suggested to make the same amendment to Article 14a § 2(b). Furthermore, Article 5 § 1(b) and Annex III could for the sake of clarity indicate that this is an in-service inspection that will take place during a regular crossing. In particular, in service inspections on very short-distance sea routes should be considered in both practical terms and the limited time available during the crossing.

5.6. Whilst clearly inspired by Article 19 on rectification and detention under Directive 2009/16/EC, the proposed new directive should specify that '*when inspection is exercised under this directive, all possible efforts shall be made to avoid a ship being unduly detained or delayed*'.

5.7. As ro-ro ferries and HSC are defined separately under Article 2 of the proposed new directive, the EESC suggests for clarity purposes to always and exclusively refer to '*ro-ro ferry and high speed passenger craft*'. Recital (6) of the proposal should therefore be amended accordingly.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
