

EVALUATION ROADMAP			
TITLE OF THE EVALUATION/FC	REFIT Evaluation of Directive 2009/16/EC on port State control		
LEAD DG RESPONSIBLE UNIT	DG MOVE – D2	DATE OF THIS ROADMAP	10/05/2016
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	04 / 2016
	Ex-post	PLANNED COMPLETION DATE	12 / 2016
	Mixed	PLANNING CALENDAR	<a href="http://ec.europa.eu/smart-regulation/evaluation/index_en.htm">http://ec.europa.eu/smart-regulation/evaluation/index_en.htm</a>
<b>This indicative roadmap is provided for information purposes only and is subject to change.</b>			

A. Purpose
(A.1) Purpose
The evaluation of the port State control (PSC) directive will contribute to the Maritime Fitness Check under the CWP 2016. It will also check, to assess the effectiveness and efficiency of the EU PSC regime as provided for in Directive 2009/16/EC (as amended). This evaluation enters under the REFIT programme and will pay particular attention to potential areas for administrative burden reduction and simplification. If the evaluation concludes that improvements can be made to the Directive, this may possibly lead to further action from the Commission.
(A.2) Justification
The EU regime on Port State Control is based on the pre-existing international arrangements of the Paris Memorandum of Understanding (PMoU) on PSC <sup>1</sup> . Under the PMoU, Maritime Authorities agree to implement a harmonized system of Port State Control.
Within the PMoU context an evaluation is ongoing to determine how the implementation of PSC can be improved. In consequence, it is deemed necessary to evaluate the EU PSC regime.

B. Content and subject of the evaluation
(B.1) Subject area
Action in the area of maritime transport aims at ensuring the long-term performance of the European maritime transport system as a whole to the benefit of all other economic sectors and to the final consumer. The Commission actively supports the efforts of EU Member States and of the European shipping sector offering quality shipping services in Europe and all over the world. The European Commission's objective is to protect Europe with very strict safety rules, reducing the risk of serious maritime accidents and minimizing the environmental impact of maritime transport.
The EU regime on PSC is set out in Directive 2009/16/EC (part of the 3rd Maritime Safety Package), which re-cast and reinforced the previous legislation in this field in place since 1995. All EU Member States with ports as well as Canada, Russia, Iceland and Norway are members of the PMoU. The Commission and EMSA work closely with the PMoU.
PSC involves the inspection of foreign ships (flying either EU or third country flags - not the flag of the port State) in ports by PSC officers for the purpose of verifying that the competency of the master and officers on board, the condition of a ship and its equipment comply with the requirements of international conventions, the living and working conditions on board and that the vessel is manned and operated in compliance with applicable international law. PSC is considered an essential line of defence against substandard ships operating

<sup>1</sup> <https://www.parismou.org/>

in EU waters.

While the PMoU expects its Member States to enforce the international rules relating to vessel safety, pollution prevention and working and living conditions developed by the relevant UN bodies (IMO<sup>2</sup> and ILO<sup>3</sup>)<sup>4</sup>, the EU regime goes further by requiring the enforcement of the international standards and any EU standards which may also apply. In the EU context particular rules apply to ferries in regular service (Directive 99/35/EC<sup>5</sup>), insurance requirements (Directive 2009/20/EC<sup>6</sup>) and further EU legislation, particularly in the maritime-related environmental protection subjects such as on the reduction of sulphur oxides emissions to air (Directive 1999/32/EC<sup>7</sup>), on ship recycling and on the monitoring reporting and verification of green house gas emissions which envisages enforcement by means of PSC is in the pipeline.

PSC is based on the idea of targeted inspections and the Commission assisted by the European Maritime Safety Agency (EMSA) provides all EU and PMoU Member States with the technical support necessary to decide which vessels to inspect and to report the results of PSC inspections via the THETIS database.

The primary responsibility for monitoring the compliance of ships with the international standards for safety, pollution prevention and on-board living and working conditions lies with the flag State<sup>8</sup> while the responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of Conventions applicable to the ship lies with the shipping company. However, over time it has been observed within the EU and globally that there is a serious failure on the part of a number of flag States to implement and enforce international standards. A similar failure is observed on the part of some owners.

As EU flag state rules cannot apply extra-territorially to third country flagged vessels or to their owners, who in line with the principle of customary international law known as "freedom of navigation" have the right to call at any port, a third line of defence against substandard shipping, PSC has been developed.

#### (B.2) Original objectives of the intervention

The main objectives of the Directive are to 1) improve safety, i.e. increase the protection of passengers and crews, 2) enhance environmental protection, i.e. reduce the risk of environmental pollution, 3) ensure maritime security and 4) improve on-board living and working conditions. The related specific objective is to drastically reduce substandard shipping through increased compliance, common criteria and harmonised procedures for controls, and a control system which takes into account the risk profile of ships.

In addition, the Directive also has the general objective to avoid distortions of competition, in the sense that operators who follow good practices are not put at a commercial disadvantage compared to those who are prepared to take short cuts with regard to the international standards. In this regard Article 27 of the Directive and Commission Regulation 802/2010 (as amended) provide for a mechanism whereby the Commission establishes and regularly publishes information relating to companies whose performance in PSC inspections has been consistently poor.

A harmonised approach for enforcement of international standards is hence important in this regard.

#### (B.3) How the objectives were to be achieved

The EU (and PMoU) PSC inspections are based on targeted inspections which aim to detect ships which do not comply with the requirements and hence may pose a safety or environmental risk. Inspections vary in frequency depending on the risk the ships pose, with the most dangerous ships (based on type, flag, previous inspection history, and owner) being inspected most often, while those vessels which pass inspection without problems are subject to less frequent inspections (thereby incentivising good operators). The sanctions system is based on the identification of deficiencies with serious deficiencies leading to detention. Vessels which are subject to frequent detentions can be banned from European waters and the system also provides for the listing of persistently substandard shipping companies. The inspection burden is shared between Member States.

<sup>2</sup> International Maritime Organisation

<sup>3</sup> International Labour Organization

<sup>4</sup> International rules include for example the International Convention for the Safety of Life at Sea (SOLAS 74), International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Standards of Training, Certification and Watchkeeping (STCW), etc.

<sup>5</sup> 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

<sup>6</sup> Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims

<sup>7</sup> Council Directive 1999/32/EC as regards the sulphur content of certain liquid fuels and its subsequent amendments including Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012

<sup>8</sup> Directive 2009/21/EC on flag state requirements

The expected output of the PSC inspections is to have all ships navigating in EU waters submitted to regular inspections resulting in a high compliance with international standards and relevant EU legislation in the fields of safety, maritime-related environmental protection, security and on-board living and working conditions.

The intervention logic in Annex provides a graphical representation of how the intervention is designed and expected to work.

As explained above, the PSC inspections are an additional layer of defence to ensure high compliance with international and EU standards and rules for all ships in EU waters. In that sense, they complement the flag state inspections under Directive 2009/21/EC on flag state requirements, which only apply to ships flying an EU flag. These inspections are a response to the same general objectives and contribute to the same expected effects and are therefore represented in the intervention logic. Flag state inspections are however subject to a separate evaluation due to the difference in application as well as other relevant inspection regimes.

## C. Scope of the evaluation/FC

### (C.1) Topics covered

The evaluation will cover all PSC inspections carried out under the Directive in all 23 EU Member States which have implemented the Directive and will include inspections on ships flying an EU flag and ships flying a third country flag.

It will cover the period since 1 January 2011 to 31 December 2015

### (C.2) Issues to be examined

The evaluation will assess the effectiveness, efficiency, relevance, coherence and EU added-value of the Directive.

Attention will also be paid more particularly to certain issues which have been identified by EMSA in a horizontal analysis of the visits carried out to Member States and which indicate that certain problems are repeatedly encountered

With regard to the relevance of the Directive

1. To what extent is the layer of defence provided by PSC (safety, working conditions, and environmental protection) still required and appropriate?

As regards effectiveness

2. To what extent is the targeting of what are described as higher risk vessels effective? Would other risk factors contribute to increase target effectiveness?

3. To what extent are all eligible ships covered by inspections (PSC, flag state, environmental regimes)? Are there any gaps in coverage?

4. To what extent has the Directive contributed to the intended objectives in terms of improvements in safety, environmental protection and social conditions?

5. How does the inspectors' training and qualification perform? How can the (present and future) availability of qualified inspectors be ensured and promoted?

6. How has the publication of company performance in accordance with Article 27 and Commission Regulation 802/2010 (as amended) worked?

With regard to efficiency

7. What are the administrative costs incurred by stakeholders? To what extent are these proportional to the benefits of improved safety?

8. To what extent is there an efficient usage of the THETIS database? To what extent is the interaction between THETIS and other related databases optimal?

The evaluation will in particular also seek to identify any possibilities for improvement in terms of costs and look into potential areas of administrative burden reduction and simplification.

With reference to coherence

9. To what extent is the Directive coherent having regard to the other legislation applicable in this area such as Directive 99/35, flag state surveys and environmental regimes? Are there any gaps or overlaps?

As regards EU added value

10. What does the Directive add to the work being done by MS either individually or within the context of the PMoU?
(C.3) Other tasks
In the frame of the external study, the contractor will also be requested to assess a number of scenarios for administrative burden reduction and simplification, in close cooperation with EMSA and using EMSA's modelling tool.
<b>D. Evidence base</b>
(D.1) Evidence from monitoring
The THETIS database contains an important range of data relevant for the evaluation, in particular data on the number of high performance (or risk) profile ships, number of inspections performed, number of deficiencies and detentions, etc. This data will be an essential source for assessing the performance of the Directive.
(D.2) Previous evaluations and other reports
Existing or forthcoming reports which can inform the evaluation include: <ul style="list-style-type: none"> <li>• Proposition de directive du Parlement européen et du Conseil sur le contrôle par l'Etat du Port - Evaluation d'impact étendue {COM(2005) 588 final}<sup>9</sup></li> <li>• Report assessing the implementation and the impact of the measures taken according to the Directive 2009/16/EC on port State control<sup>10</sup></li> <li>• EMSA Horizontal Analysis of Visits to Member States June 2015</li> <li>• Ex-Post Impact Assessment on the Implementation and Effects of the Third Maritime Safety Package, European Parliamentary Research Services, Ex-Post Impact Assessment Unit PE 536.331 - December 2014</li> <li>• Close interaction will be ensured with related ongoing or planned evaluations including the evaluation of Directive 2009/21 on flag state requirements, the evaluation of Directive 2002/59 on Vessel Traffic Monitoring and Information Management, and the evaluation of Directive 2008/106/EC on minimum level of training of seafarers.</li> <li>• Findings of recently finalised evaluations will also be taken into account. In particular, the Passenger Ship Safety fitness check, which included a cost assessment of surveys and inspections under Directive 99/35 for passenger ships in comparison to PSC inspections, will be reviewed and used as appropriate. The evaluation of Directive 2000/59 on Port Reception Facilities may also provide some input.</li> <li>• Forthcoming Commission report to the European Parliament on the implementation of Directive 1999/32/EC as regards marine fuels.</li> </ul>
(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)
EMSA has carried out a series of visits relating to the implementation of Directive 2009/16/EC, the cycle of visits began in March 2012 and is due to be completed by April 2016. It covers 23 EU Member States and 2 EEA countries. The issues which have arisen during these inspection visits, of which some have also been identified by individual Member States, relate inter alia to questions concerning definitions, to the distribution of the inspection burden, to the treatment of states with small fleets and to how ships are targeted. These findings will be used in the frame of the evaluation and will be confirmed by triangulation with further data.
(D.4) Consultation
There will be an open public consultation covering the 5 evaluation criteria. This will ensure that non-organised interests (like passengers) are also consulted. The public consultation on all initiatives will be launched in July 2016 and will close in October 2016 (16 weeks). All citizens and organisations can contribute to the consultation. This open public consultation will be available via YourVoiceInEurope. All relevant information will be accessible via the consultation web page and a "Synopsis Report" will be published there after the consultations are completed.
A high level event / stakeholder conference will be held in October 2016 before closure of the consultation. Particular attention will be paid to raising awareness about the public consultation and to ensure its accessibility. The questionnaire will only be available in English but it will be drafted in a clear and simple language avoiding

<sup>9</sup> [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2005/sec\\_2005\\_1499\\_fr.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2005/sec_2005_1499_fr.pdf)

<sup>10</sup> COM(2012(660)) final

jargon. Contributions in all EU languages will be accepted. All relevant information will be accessible via the consultation web page. And that a "Synopsis Report" will be published there after the consultations are completed

Furthermore several events and conferences with stakeholders, including within the formal governance and expert groups already operational, will be organised to consult and collect ideas. Major shipping events are valuable platforms to consult and discuss the fitness check and REFIT evaluations. Such events will include the Malta Maritime Summit due to take place on 3-6 October 2016, which will inter alia focus on the EU's role versus international regulation and the 2017 European Shipping Week (ESW), organised by the European ship-owners (ECSCA). The ESW major event is the Conference scheduled on 1 March 2017 which will be centred around digitalisation (administrative simplification) of the maritime transport sector. The informal ministerial meeting under the Maltese Presidency which will follow, probably late April or early May 2017, can be used to exchange views with the Member States on the results of the fitness check and REFIT evaluations and necessary follow-up initiatives.

In addition, stakeholders are actively consulted and involved on a regular basis by EMSA through expert groups and workshops. Such targeted consultations of relevant stakeholders for the more specific technical issues will be carried out either by external contractors or by EMSA, in both cases according to a methodology fixed with the European Commission. These more targeted consultations will take the form of interviews and case studies with various stakeholders. Tools will include surveys/questionnaires, interviews, stakeholder meetings/conferences and expert groups.

The following stakeholders have been identified:

- (a) EU Member States as port States and as flag States or other relevant competent authorities;
- (b) ship-owners engaged in different types of trade;
- (c) ship agents; operating in ports
- (d) third (non-EU) States whose ships call in EU ports;
- (e) recognised organisations developing and applying technical standards for the design, construction and survey of ships and which carry out surveys and inspections on board ships;
- (f) seafarers and their organisations in particular with regard to the enforcement of applicable standards of living and working conditions;
- (g) other actors involved in maritime transport, who can be involved in the application of the directive such as pilots, port operators and other national and international bodies involved in port State control.

(D.5) Further evidence to be gathered

N/A

## **E. Other relevant information/ remarks**

The evaluation will be carried out in close interaction with EMSA.

**ANNEX**

