

EVALUATION ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of Directive 2009/21/EC on compliance with flag State requirements (FS Directive) and Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector (AI Directive)		
LEAD DG RESPONSIBLE UNIT	DG MOVE – D2	DATE OF THIS ROADMAP	10/05/2016
TYPE OF EVALUATION	Ex-post	PLANNED START DATE	04/2016
	Evaluation	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
<p>The evaluation of the Flag State (FS) Directive and Accident Investigation (AI) Directive will contribute to the Maritime Fitness Check under the CWP 2016 (Annex 2).</p> <p>The purpose of the evaluation is to assess the application and the impacts of the two Directives taking into account their objectives and looking, among other points, into their impact on maritime safety and relevant developments both national and international relating to the discharge by member states of obligations as flag States.</p> <p>The results of this exercise will also serve for the Commission report on the application of the Accident Investigation (AI) Directive, as required by Art.23.</p> <p>The Directives will be evaluated in the context of the overall policy of fostering a quality competitive EU fleet. Distortion of competition can only be avoided when all flag States carry out their obligations, including accident investigations, as required by the legal instruments (EU and international conventions) and where enforcement of the rules is as uniform as possible.</p>
(A.2) Justification
<p>The International rules (UNCLOS, IMO Conventions, in particular the IMO Instruments Implementation CODE (III CODE)) oblige Member States as Flag States to take all necessary steps to give the applicable international instruments full and complete effect.</p> <p>The obligation to undergo audits, which has been voluntary under the IMO regime was made mandatory for EU Member States in the FS Directive. However in accordance with Art 7 of the FS Directive, this obligation is removed when the IMO audit regime becomes mandatory. The IMO audit regime became mandatory on 1/1/2016. This situation and because of the international obligations an evaluation of the Directive becomes necessary.</p> <p>As part of these obligations and therefore part of audits is the core obligation on Flag States to carry out casualty investigations after accidents. The EU regime on the investigation of accidents in the maritime transport sector, implementing the International rules, is based on Directive 2009/18/EC. Article 23 of the Directive provides that the Commission shall in 2016, submit a report to the European Parliament and the Council on the implementation of, and compliance with, this Directive, and, if necessary, propose further measures in the light of the recommendations set out therein. Ideally such a report should not only look into compliance but also into the effectiveness and efficiency of implementation and has therefore elements of an evaluation.</p>

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.

International law (developed by the International Maritime Organisation - IMO) requires that Member States as Flag States take all necessary steps to give the applicable international instruments full and complete effect. This is the non-delegable responsibility of any Flag State and the underlying core principle for ensuring that, from the point of view of safety and environmental protection, is that a ship is fit for the service for which it is intended. Directive 2009/21/EC lays down the framework for oversight at EU level by making the (at that time voluntary) IMO audits mandatory for EU flag States. Hence, the effective discharge of all relevant obligations are verified through audits and peer review (with audit results and follow-up actions publicly available) by the International Maritime Organisation (IMO) of a flag State in its entirety and including all aspects, ship registers and administrative arrangements.

The core obligation on a flag State to carry out casualty investigations is stipulated in specific EU law; Directive 2009/18/EC incorporates the principles underlying the relevant IMO code into EU law. Countries affected by an accident at sea have the responsibility to investigate the causes and propose ways of preventing recurrences in the future. Such investigations do not seek to determine or assign any civil or criminal liability but rather, in the EU context, to ensure (1) that AI takes place (2) is reported and (3) is discussed so that the MS can 'learn' from accidents and prevent them from happening again thereby improving maritime safety.

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

The Directives were adopted as part of a package aiming to further improve maritime safety.

The purpose of the FS Directive is to:

- (a) ensure that Member States efficiently and consistently discharge their obligations as flag States and,
- (b) To enhance safety and prevent pollution from ships flying the flag of a Member State.

As part of flag State obligations, the purpose of the AI Directive is to reduce the risk of future maritime casualties.

These are fundamental in ensuring a level playing field in maritime safety internationally

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

As regards the FS Directive, Member States as flag States are obliged to discharge their obligations ensuring that all applicable rules at International and EU level are adhered to before granting a ship the right to fly its flag; enter into (one of) its register of ships and start operating. This is the fundamental of ensuring a level playing field in maritime safety internationally. In order to support MS flag administrations to effectively exercise their obligations the EU legislation required all MS to develop, implement, certify and maintain a quality management system for the operational parts of the flag related activities. In order to ensure effective oversight and control over their fleet each Member States must keep, and have readily available (normally in a FS register) detailed information and records concerning ships flying their flag, including information on marine casualties. For verification purposes, each MS as flag State must mandatorily undergo an IMO Audit (non-mandatory at the time) and publish the outcome of the audit in accordance with relevant national legislation on confidentiality. The overall purpose is to identify and act upon any areas or issues to further improve the exercise of functions and operational oversight of vessels as part of continuous improvement.

More particularly as regards the AI Directive, Member States are obliged to establish an independent investigative body to look into very serious marine casualties and decide on the investigation of others, to provide for a system of safety-focused investigations, to draw up commonly structured investigation reports and to populate the European Marine Casualty Information Database (EMCIP) which has been created for this purpose.

To further facilitate the work of Member States, a common methodology for investigating marine casualties and incidents has been developed. Moreover, a permanent cooperation framework of national investigative bodies has been established to enhance cooperation amongst them.

The expected output of the harmonised system of safety inspections is that investigations are conducted in an unbiased manner and that the root causes of accidents are more easily identified along with the appropriate lessons derived therefrom. The Directive allowed for the collection, collation and sharing of safety data. This should have facilitated the industry in responding to accidents and the development of more targeted, evidence

based policy responses at international, EU and Member State level to accidents and incidents.

As explained above, safety investigations are conducted separately and are distinct from police, judicial or administrative investigations which may be conducted by either the flag or coastal states. Safety investigations are an ex post examination of how a vessel was equipped and operated before, during and after an accident and as such the information gathered during the safety investigations may complement other safety related inspections of vessels such as those carried out under port state control inspections (under Directive 2009/16/EC) or flag state surveys (under Directive 2009/21/EC) – the latter of which only apply to EU flagged vessels.

Taken together these Directives form, in accordance with international rules, the core in ensuring maritime safety; Flag State being the first line of defence (for ensuring vessels are fit for purpose in the first place), Port State Control being second line of defence (carrying out verification spot checks) and, should an accident still happen, accident Investigation which will look at all the previous aspects and give, as appropriate, safety recommendations in the interest of further improving the regime and the effectiveness of the rules and policy.

### C. Scope of the evaluation/FC

#### (C.1) Topics covered

The evaluation will in particular focus on how the framework has functioned in relation to flag State responsibilities:

- The Flag State audit process
- Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State (including possible links with Regulation 789/2004 on the transfer of cargo and passenger ships between EU FS registers)
- State of EU FS registers (size, gained/lost numbers of ships, composition of fleet, size and capacity of administration) and record keeping/availability
- Performance in port State control (all regimes)
- Quality Management System certifications and internal evaluation
- Independence and resources in relation to Accident Investigation

As regards the Flag State obligation to carry out Accident Investigations, the evaluation will look at the main causes of accidents and incidents and to what extent common criteria and harmonised procedures for safety investigations and collecting accident data have been applied.

The evaluation will cover all investigations of accidents carried out under the scope of the AI Directive in all EU Member States involving accidents and incidents on ships flying an EU flag and ships flying a third country flag.

As regards the FS Directive the evaluation will examine the application and impacts of the Directive from 17.06.2011, when it took effect, until 31.12.2015<sup>1</sup> in all EU Member States in which it is implemented.

As part of the above but still distinct, the AI Directive evaluation will examine the application and impacts of the Directive (as amended) from 17.06.2011, when it took effect, until 31.12.2015<sup>2</sup> in all EU Member States<sup>3</sup> in which it is implemented.

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

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

The following issues are of particular importance for the evaluation:

<sup>1</sup> There may be a need to look at data, as far as available, for a period prior to 2011, in order to compare and see trends in effect before and after. Dates will be confirmed by the Commission at the kick-off meeting.

<sup>2</sup> Depending on the data provided by EMSA, the evaluation period could be narrowed to 30/06/2015. Date will be confirmed by the Commission at the kick-off meeting.

<sup>3</sup> Croatia joined the Union in July 2013; but will be included in this evaluation as prior to its EU accession it had been a member of the Paris MoU on Port State control and had largely followed the same rules and structures as the other EU MS, therefore Croatia is included in this ex-post evaluation.

IMO Audits, which have been voluntary under the International regime but became mandatory in the FS Directive, come to an end in accordance with Art 7 of the FS Directive, when the international FS audit regime become mandatory. The International FS audit regime became mandatory on 1/1/2016. The evaluation will therefore particularly look at the effects produced by this provision; namely the phasing out of the requirement imposed by the FS directive to undergo IMO audits.

In this framework the evaluation will focus on the following

- To what extent Audits have been undertaken in the past, their scope and coverage
- The underlying risk of unequal harmonisation (consistency in application) among EU Member States as Flag States,
- The effects on the dissemination of Audit results

The above issues will be considered against the background of the core task of EMSA to carry out visits and inspections in relation to the EU maritime safety aquis, most of which implement the international rules the IMO audit covers. There is also a need in this context to look at consistency in follow-up measures by Flag States to ensure effective improvement measures/implementation, also from a quality management system point of view, in the context of achieving the overall EU maritime policy objectives.

To this end, it will also be examined, to what extent continuous improvement in maritime safety has been achieved through identifying any gaps and ensuring consistency amongst flags in the enforcement or application of the rules ensure better consistency in application of the rules between flags (avoiding 'register hopping'). Port State Control data and actions should be analysed.

Evaluation Questions:

State of play

1. To what extent have MS undergone IMO Flag State audits? What was the scope and coverage?
2. To what extent EU MSs have ratified International Conventions?
3. To what extent MSs follow up on detentions under port State control (PSC) regimes of their flagged ships? MS PSC performance since the introduction of the Directive (2009).

With regard to the relevance

4. To what extent are the framework requirements in the FS Directive, including the safety investigations required by the AI Directive, relevant and appropriate to the current needs?

As regards effectiveness

5. To what extent and how:
  - a. have MSs made the outcome of the audit available and to whom (the public)?
  - b. did the requirements to publish the outcome of the audit ('peer review') help to achieve the objectives of the Directive?
  - c. transparency and availability of relevant information about ships registered under EU flag registers has been achieved?
6. To what extent the Directive has helped to avoid 'register hopping'?
7. To what extent the requirement that all MSs create an accident investigation body led to the expeditious holding of unbiased safety investigation?
8. To what extent are all Member States adequately resourced, including for their independent investigation body? Does this have an impact on effectiveness? Are there any gaps in coverage?
9. What are the effects, if any, on the work of EMSA, both as regards the visits and inspections programme they carry out and as regards the support to MS in particular in the area of AI?

With regard to efficiency

10. Is the system for record keeping and reporting (AI reports) established by the AI directive efficient?
11. Are there any potential areas of administrative burden reduction (for example regarding the EMCIP database) and simplification?

With reference to coherence

12. To what extent are the Directives internally coherent and complementary to the other maritime safety legislation such as port state control inspections and flag state surveys (delegated to RO or not) which provide for systems of regularly scheduled and/or targeted ex ante inspections? Are there any gaps or overlaps?

<p>As regards EU added value</p> <p>13. What has the EU interventions added to the work being done by MSs either individually or within the context of the IMO?</p>
(C.3) Other tasks
- Gathering data and statistics
<b>D. Evidence base</b>
(D.1) Evidence from monitoring
<p>Data and records from PSC; the Equasis database hosted by EMSA; as well as reports stemming from Article 8.2 of the FS Directive regarding the performance under the PSC regime (White/Grey/Black list), will be used for assessing the performance of the Directive. Outcomes and follow-up action from IMO VIMSAS audits, as far as available, will also be looked at.</p> <p>The EMCIP database contains an important range of data relevant for the evaluation, in particular data on the number of investigations, types of investigations accident types etc. This data will be an essential source for assessing the performance of the Directive.</p>
(D.2) Previous evaluations and other reports
<p>Related ongoing or planned evaluations including the evaluation of Directive 2009/16/EC on PSC; 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, will feed into the evaluation.</p> <p>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 under Directive 2009/16/EC , will be reviewed and used as appropriate.</p> <p>Other evaluations and reports that will feed into this evaluation:</p> <ul style="list-style-type: none"> <li>• Recent Implementation report on Directive 2009/21/EC (as well as the related implementation report for Regulation 789/2004)</li> <li>• Ex-Post Impact Assessment on the Implementation and Effects of the Third Maritime Safety Package EPRS   European Parliamentary Research Services, Ex-Post Impact Assessment Unit PE 536.331 - December 2014</li> <li>• EMSA Horizontal Analysis of Visits to Member States October 2015</li> </ul>
(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)
<p>EMSA has carried out a series of visits relating to the implementation of Directive 2009/18/EC. The cycle of visits began in 2012 and is due to be completed by 2016. It covers all EU Member States, Norway and Iceland. The issues which have arisen during these inspection visits, of which some have also been identified by individual Member States, relate inter alia to:</p> <ul style="list-style-type: none"> <li>• questions concerning problems relating to definitions in the directive</li> <li>• issues around the conduct of preliminary investigations and the decision not to investigate 'serious casualties'</li> <li>• cooperation between investigation bodies and other competent authorities</li> <li>• the independence and resourcing of the investigative bodies</li> <li>• cooperation with third countries, the publication of interim and final accident reports</li> <li>• the follow up procedures for safety recommendations</li> <li>• and the EMCIP database</li> </ul> <p>These findings will be used in the frame of the evaluation and will be confirmed by triangulation with further data.</p>
(D.4) Consultation
<p>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.</p>

In addition to the public consultation, targeted consultations are foreseen of relevant stakeholders for the more specific technical issues that will be carried out either by the external contractor or by EMSA, in both cases according to a methodology fixed with the European Commission. These more targeted consultations can take the form of interviews and case studies with various stakeholders. Tools will include surveys/questionnaires, interviews, stakeholder meetings/conferences and expert groups. The stakeholders that have been identified include national maritime authorities/administrations, shipowners/operators, port and terminal operators, seafarers and their organisations/trade unions, maritime related European associations, 3<sup>rd</sup> Country Flag States, classification societies, etc.

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 (ECSA). 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.

(D.5) Further evidence to be gathered

N/A

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

[e.g. comments on scope, further detail on communication activities or validation exercises]