

FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Maritime legislation fitness check covering legislation on flag state responsibilities, accident investigation, port state control, the vessel traffic monitoring and information system and, the reporting formalities for ships arriving in and/or departing from ports of Member States		
LEAD DG RESPONSIBLE UNIT	DG MOVE – D2	DATE OF THIS ROADMAP	06/10/2016
TYPE OF EVALUATION	FITNESS CHECK INTERNAL	PLANNED START DATE	10/2016
		PLANNED COMPLETION DATE	06/2017
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose

(A.1) Purpose

The third maritime safety package was adopted in 2009, again as a response to a disastrous accident, with the aim to create and enforce a stricter regime regarding maritime safety in and around EU waters and to ensure that different aspects of responsibility are covered to further enhance quality shipping, make it competitive and, as far as possible, avoid accidents from happening in the first place.

In parallel the Commission adopted in 2009 a Communication and action plan with a view to establish a European Maritime Transport Space without Barriers, a concept which extends the Internal Market to intra-EU maritime transport by eliminating or simplifying administrative procedures with the aim of making it more attractive, more efficient and more competitive. A year later, legislation to simplify and streamline reporting formalities was adopted as one of the measures announced in the action plan. The objective of the European Maritime Transport Space without Barriers is also supported by the maritime safety legislation on vessel traffic monitoring and information exchange through the use of the Union Maritime Information and Exchange System.

The mandate of the European Maritime Safety Agency was revised subsequently and gave a bigger role to the Agency to work with the Commission and the Member States on fulfilling these objectives.

Since 2009, several developments have affected the maritime sector. The 2008 financial crisis has brought about overcapacity, which has intensified the already strong competition in the shipping market. The crisis has also led to austerity putting strain on the resources of public administrations with responsibilities in the field of maritime safety. This has created new challenges for policy makers and market operators including the need to avoid that competition and fewer resources go to the detriment of safety and quality shipping and the essential necessity to boost efficiency through digitalisation and administrative simplification.

Nowadays it is recognised that there has been notable progress in eliminating sub-standard vessels from EU waters. The level of satisfaction with the safety legislation and safety levels achieved is high but stakeholders are concerned about effective enforcement. The negative potential economic, environmental, social and political impacts of major maritime accidents make it indispensable to lead a maritime safety policy which is at the same time proactive and preventive. At the same time the constraints on resources of public administrations advocate to reflect on an improved policy framework to enable the Union and the Member States to carry out their obligations as flag States and port States and to respond to accidents appropriately when they happen. It goes without saying that all the above need to be addressed in the context of enhancing the efficiency and improving the competitiveness of the marine transport sector.

The public consultation on the Implementation of the 2009 EU's Maritime Transport Strategy (for the mid-term review) indicated clearly that the simplification of administrative formalities for maritime transport is the number one

concern of stakeholders. Full EU harmonisation of reporting requirements and wider coverage of formalities are urged by the shipping industry. In its Athens Declaration in 2014¹, the Council urged the Commission and the Member States to continue work on further digitalisation and simplification of administrative and operational procedures and the consequent reduction of administrative burden for the facilitation of maritime transport.

In that same public consultation, stakeholders have been calling for a more effective maritime transport regulatory framework, more “fit for purpose” and more capable of promoting competitiveness and economic growth.

In 2015 the Commission has decided to undertake a mid-term review of the 2009's EU Maritime Transport Strategy and in support of this exercise to undertake a fitness check in which it will reflect on the overall achievements and limitations of some of the key European measures.

The overall justification of the fitness check is to look more closely at the interaction between the concerned legislative acts and their implementation – including the supportive role the European Maritime Safety Agency (EMSA) can play – to check whether and how the objectives of competitiveness and quality shipping can be better supported and mutually reinforced, while also considering the international rules and conventions on which they are based and that they enforce.

The fitness check will pay particular attention to identifying any synergies (e.g. improved performance, simplification, lower costs, reduced burdens) or inefficiencies (e.g. excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures) within the group of measures and help to identify the cumulative impact of the interventions covered, covering both costs and benefits.

The outcome of the fitness check should allow to assess whether overall the selected elements of the existing regulatory framework serve well the objectives of the policy area – is fit for purpose – or whether there are possible adjustments which can increase the cumulative impact of these measures and/or minimise regulatory burdens.

The maritime transport legislative acts mentioned above will be evaluated also individually while the fitness check will assess the existing regulatory framework in a more strategic and comprehensive way.

(A.2) Justification

The Maritime Legislation Fitness Check has been included in the Commission Work Programme for 2016 as a REFIT initiative. REFIT is the European Commission's Regulatory Fitness and Performance Programme to make EU law simpler and to reduce regulatory costs without compromising policy objectives.

The Commission has also an obligation to report about the implementation of several of the legislative acts (Port State Control and Accident Investigation directives) and has recently reported on the others (Flag State, transfer of ships between registers of Member States; Ship Classification and Survey Organisations, Vessel Traffic Monitoring and Reporting Formalities directives).

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 preventing sub-standard shipping, reducing the risk of serious maritime accidents and minimizing the environmental impact of maritime transport.

Taken together the policy area in maritime transport covered by the fitness check forms, in accordance with international rules, the core in ensuring maritime transport safety and efficiency:

- Flag State - the first line of defence (for ensuring vessels are fit for purpose in the first place),
- Port State control - the second line of defence (carrying out verification spot checks),
- Coastal State obligations under international law supported by EMSA systems (for ensuring vessel traffic monitoring and appropriate exchange of information between responsible authorities),
- Reporting formalities obligations from ships/ship masters to land based authorities and reduction of

¹ Council conclusions on the Mid-Term Review of the EU's Maritime Transport Policy until 2018 and Outlook to 2020, 5-6 June 2014, endorsing the Athens Declaration of the May 2014 Informal Council.

administrative burden,

- And, should an accident happen, accident investigation (resulting in safety recommendations in the interest of further improving the regime and the effectiveness of applicable rules).

The responsibilities of States as flag state (or state of registry), port state and coastal state are defined through a system of international conventions and regulations: the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78); the International Convention for the Safety of Life at Sea (SOLAS); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978; the Convention on International Regulations for Preventing Collisions at Sea (COLREG) 1972; the International Convention on Load Lines (LL) 1966; and the 1982 United Nations Convention on the Law of the Sea (UNCLOS). These six instruments have in effect become the charter of port and flag state safety and environmental protection.

In particular,

On Flag State

Member States as flag States have to ensure 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. In order to support national flag administrations to effectively exercise their obligations and to ensure a level playing field, the EU legislation (FS directive) required all Member States to develop, implement, certify and maintain a quality management system for the operational parts of the flag related activities. In order to verify, each Member State as flag States must mandatorily undergo an IMO Audit (non-mandatory in 2009 when the legislation was adopted) and publish the outcome of the audit in accordance with relevant national legislation

On Port State

In order to improve maritime safety and the prevention of pollution from ships calling into ports in Europe, Member States carry out PSC targeted inspections which aim to detect preventively ships which do not comply with the requirements (stemming from international conventions) and hence may pose a safety or environmental risk. 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 with a view to provide a line of defence against sub-standard ships independent of their flag (PSC is exercised on all vessels except those flying the flag of the port State).

On Coastal State

To support coastal State obligations under international law for the monitoring of maritime transport (goods and passengers) and maritime traffic (the vessels), the EU Maritime Information and Exchange System ("SafeSeaNet") has been established in EMSA. Apart from enhancing maritime safety, port and maritime security, environmental protection and pollution preparedness, the system allows for the exchange and sharing, in accordance with Union legislation, of additional information facilitating efficient maritime traffic and maritime transport.

To simplify and harmonise the administrative procedures applied to maritime operations Member States were required to establish, by 1st June 2015, a National Single Window (NSW) for receiving port call notifications. Member States have the obligation to share the collected information with all authorities involved in ship clearance at national level, as well as at EU level upon request from other Member States, using the EU Maritime Information and Exchange System.

On accident investigation

To improve maritime safety and the prevention of pollution from ships and reduce the risk of future marine casualties, Member States as flag States are obliged to establish an independent investigative body to investigate very serious marine casualties and to provide for a system of safety-focused investigations. Thus, investigations are conducted in an unbiased manner and the root causes of accidents are more easily identified along with the lessons learned – in the interest of continuous improvement.

In overall, the fitness check encompasses the following legislative acts:

- Directive 2010/65/EC dealing with reporting formalities for ships arriving and/or departing from ports (RFD)
- Directive 2002/59/EC dealing with vessel traffic monitoring and information system (VTMIS)
- Directive 2009/16/EC dealing with port State control (PSC)
- Directive 2009/21/EC dealing with compliance with Flag State requirements (FS)
- Directive 2009/18/EC dealing with accident investigation (AI)

These acts will also be subject to 3 specific evaluations:

- The joint evaluation of Directives 2010/65/EC and 2002/59/EC dealing respectively with reporting formalities for ships arriving and/or departing from ports and vessel traffic monitoring and information
- The evaluation of the port State control Directive (2009/16/EC)
- The evaluation of the Flag State Directive (2009/21/EC) and the accident investigation Directive (2009/18/EC), accident investigation being a core responsibility of a Flag State

The results of these 3 evaluations will feed into the fitness check that will focus on the interaction between the different aspects of the relevant legislation in place in the attainment of the overall policy objectives.

(B.2) Original objectives of the intervention

The general objectives of the maritime transport legislation targeted by this fitness check is improving maritime safety, the prevention of pollution from ships, the efficiency of maritime transport (goods and passengers) and maritime traffic (the vessels) as well as ensuring a level playing field for European flag States and operators and supporting the competitiveness of the European maritime transport sector, in a global setting.

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

The legislative acts covered by the fitness check aim at guaranteeing an effective exercise of flag state control, port state control and coastal state duties while at the same time simplifying the reporting formalities which relate to these controls.

Flag state responsibilities and port state control are closely related as covered by specific provisions of international conventions mirrored by the EU directives. Coastal state obligations for safety of navigation complement flag state responsibilities and port state control and have been made more effective through EMSA operational systems.

Finally, simplification of reporting formalities by ship masters to comply with safety, security, environmental, immigration and customs regulations, was a key element of the whole system to guarantee efficiency of maritime transport and traffic while maintaining a high level of safety, security and environmental protection in EU waters.

The intervention logic presented in the Annex provides a graphical representation of this complementarity.

C. Scope of the evaluation/FC

(C.1) Topics covered

The fitness check will provide a comprehensive evaluation of key parts of maritime transport legislation supporting maritime safety, pollution prevention, efficiency of maritime transport and the competitiveness of short sea shipping. The fitness check will address how several related legislative acts have contributed to the attainment of these policy objectives.

The scope of the exercise covers the EU policies in:

Flag state – the operational parts of the flag state related activities including accident investigation

Port State – the port state control inspections

Coastal State – the reporting formalities and the EU Maritime Information and Exchange System

The fitness check will look into the complementarity, synergies and the cumulative impacts of the various obligations and responsibilities conferred upon Member States and industry and the possible overlaps and inconsistencies and potential for simplification and reduction of administrative burden while also considering the international rules and conventions on which they are based and that they enforce.

This will be evaluated also against the background of EMSA's supportive role (eg technical assistance to Member States) and the potential bigger role that the Agency could play in supporting national maritime administrations in fulfilling their obligations as flag, port or coastal States and the industry.

The fitness check will also assess the interaction between the various control, surveys and inspection systems contained in the different acts. Findings of recently finalised evaluations will be taken into account in this regard like for example the Passenger Ship Safety fitness check, which included a cost assessment of surveys and inspections under Directive 99/35/EC for passenger ships in comparison to port state control inspections under Directive 2009/16/EC.

The fitness check will in addition look at the various reporting obligations for the industry and assess how to improve the interventions and seek increased consistency to alleviate the burden for the industry. Once again this will be evaluated against the background of EMSA technical assistance to Member States and facilitating role for reporting obligations, building on the existing platform/system and the reporting once principle.

The scope of the fitness check will cover all EU Member States and the period when the various instruments started to enter force with the proviso that obligations and reporting requirements have come into force over the years. The fitness check will therefore concentrate on the most recent period to assess the interaction between the provisions as they are now being applicable.

Several key systems and databases have been set up and are under continuous development in EMSA under the legislation and policy area that are now being reviewed:

- the Union Maritime and Information Exchange System (SafeSeaNet) under the VTMS directive;
 - the THETIS database under the port State control directive (which records the inspections results);
 - the European Marine Casualty Information Platform - EMCIP database under the accident investigation directive;
- As well as others about to become operational:
- the HAZMAT database on dangerous and polluting goods.

In addition EMSA is providing essential technical assistance to Member States required under the reporting formalities directive for the setting up of the National Single Windows. EMSA is also involved in the pilot project launched by the Commission to extend the functionalities of the National Single Window and allow the single submission of cargo related data ('eManifest') that is strongly advocated by the maritime industry.

Integration of data takes place at various levels. The effects of combining several information sources are significant for maritime safety and maritime transport efficiency and therefore need to be taken into account in the fitness check.

(C.2) Issues to be examined

Indicative list of issues:

Effectiveness of the maritime legislation reviewed:

- To what extent have the objectives been achieved?
- What factors influenced the achievements observed?

Efficiency of the maritime legislation reviewed:

- To what extent has the intervention been cost effective for the various parties involved (national maritime administrations, shipping sector, port authorities, etc.)?
- To what extent are the costs of individual instruments proportionate to the overall benefits achieved?

Relevance of the maritime legislation reviewed:

- To what extent is EU intervention still relevant?
- How well do the (original) objectives (still) correspond to the needs within the EU?
- How relevant is the EU intervention to the needs of EU citizens?

Coherence of the maritime legislation reviewed:

- To what extent is the intervention coherent within and between each instrument?
- To what extent is the intervention coherent with wider EU policy?
- To what extent is the intervention coherent with international obligations?

EU Added-value of the maritime legislation reviewed:

- What is the additional value resulting from the EU intervention(s), compared to what could have been achieved by Member States at national and/or regional levels?
- To what extent do the issues addressed by the intervention continue to require action at EU level?
- What would be the most likely consequences of stopping or withdrawing the existing EU intervention?

These questions will be refined at a later stage.

(C.3) Other tasks

D. Evidence base

(D.1) Evidence from monitoring

The analysis for the fitness check will be based on the evidence gathered in the individual evaluations covering legislation on flag state responsibilities, accident investigation, port state control, the vessel traffic monitoring and information system and, the reporting formalities for ships arriving in and/or departing from ports of Member States.

This evidence includes:

- Evidence from assessing the implementation and application of legislation (complaints, enquiries, infringement procedures)
- Evidence gathered by EMSA through its cycles of visits to the Member States relating to the implementation of VTMS, PSC and AI directives
- Evidence gathered by EMSA through its technical assistance and peer review process related to the national single window
- Evidence contained through EMSA systems and databases such as deficiencies recorded on THETIS (the database for reporting the results of port state control inspections), information from EMCIP (the European Marine Casualty Information Platform) etc.
- Evidence gathered through the individual ex-post evaluations of the legislative acts covered by the fitness check

(D.2) Previous evaluations and other reports

- 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
- Implementation reports for the VTMS and for the RFD directives (respectively COM(2011) 232 final of 28 April 2011 and COM (2014) 320 final of 25 June 2014)
- Implementation reports for the Regulation on the transfer of ships between registers of the EU (Regulation 789/2004/EC); for the Regulation on rules and standards for ship inspection and survey organizations and the Directive for the Member States relationship with ship inspection and survey organizations (respectively Regulation 391/2009/EC and Directive 2009/15/EC); and for the Directive on insurance for maritime claims (Directive 2009/21/EC)
- Forthcoming Commission Implementation report on the mid-term review of the 2009 EU's Maritime Transport Strategy
- Forthcoming Evaluation of the EMSA mandate commissioned by the Agency Administrative Board
- Forthcoming Individual ex-post evaluations on RFD/VTMS, PSC, FS/AI and STCW
- REFIT of the Passenger Ship Safety legislation

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

The evidence gathered through the individual ex-post evaluations will take into account existing implementation reports and results from EMSA's visits and inspections in MS and horizontal analyses. The fitness check will deal with such evidence only to the extent that such evidence affects the interaction between different legislative acts.

(D.4) Consultation

There will be a twelve-week 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 be open for 12 weeks. All citizens and organisations can contribute to the consultation. 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 jargon. Contributions in all EU languages will be accepted.

In addition to the public consultation, targeted consultations are foreseen of relevant stakeholders for the more specific technical issues related to the various legislative acts that 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 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, 3rd 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

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E. Other relevant information/ remarks

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Annex

