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**A SET OF SUBSIDIARY LEGISLATION TO TRANSPOSE
DIRECTIVE (EU) 2017/2110 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL OF 15 NOVEMBER 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 INTO
MALTESE LAW**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.)
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PURPOSE BEHIND THIS LEGISLATIVE PROPOSAL

The basis for this proposal stems from the adoption of European Union (EU) Directive (EU) 2017/2110¹ that affects matters concerning Port State Control (PSC) and the regulation of Ro-Ro passenger vessels and high-speed passenger craft. This Directive came into effect on 15 November 2017.

Directive (EU) 2017/2110 is intrinsically linked with Directive 1999/35/EC² and Directive 2009/16/EC³, which have already been transposed into Maltese law by means of Subsidiary Legislation (S.L.).

During the discussions of Directive (EU) 2017/2110 it was noted that the ultimate aim of this Directive would be to:

simplify and streamline the existing EU passenger ship safety regulatory framework, in order to (i) maintain EU rules where necessary and proportionate; (ii) ensure their correct implementation; and (iii) eliminate potential overlap of obligations and inconsistencies between related pieces of legislation. An overarching objective is to provide for a clear, simple and up-to-date legal framework that is easier to implement, monitor and enforce, increasing thus the overall safety level.⁴

The proposal is set up in line with the objectives of the EU Commission's Better Regulation Agenda by ensuring that existing legislation is coherent, direct, does not create unnecessary burden and remains abreast with ever changing, societal,

¹ Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 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 (Directive (EU) 2017/2110).

² Council Directive 1999/35 of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro vessels and high-speed passenger craft (Directive 1999/35/EC).

³ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast) (Directive 2009/16/EC).

⁴ Proposal for a 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 (2016) (1).

technological and political developments.⁵ This Directive also seeks to implement the aims of the 2018 Maritime Transport Strategy⁶ by safeguarding the quality of regular ferry services for passengers traversing from one EU Member State to another.

Given the adoption of the new directive and its impact on the other directives, it is thus necessary to draft national legislation that will give full effect to the provisions of Directive (EU) 2017/2110. Therefore, Malta will need to implement the necessary legislative changes in order to abide with this new legal position. This will be achieved through a series of L.N.(s) (Legal Notices), which are the legislative instruments that will amend and repeal the respective Maltese legislation which is currently encompassed under two S.L. and adopt a new S.L. to further regulate matters stipulated under Directive (EU) 2017/2110.

THE EU DIRECTIVES

2.1 Directive 1999/35/EC on regular Ro-Ro ferry and high-speed passenger craft services

The main aim behind Directive 1999/35/EC was to establish a system of compulsory surveys in order to maintain and ensure a high level of safety throughout the operation of regular Ro-Ro ferries and high-speed passenger craft services to or from ports in the Member States.⁷ Furthermore it aimed to endow Member States with the authority to conduct, participate in or cooperate with any investigation related to maritime casualties or incidents arising from the provision of these services.⁸ Therefore, in order for such minimum safety standards to have the fullest effect, action was taken at Community level by establishing this Directive.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strategic goals and recommendations for the EU's maritime transport policy until 2018 (COM/2009/0008) Final.

⁶ Ibid.

⁷ Council Directive 1999/35/EC, Article 1.

⁸ Ibid.

The safety standards that Directive 1999/35/EC had introduced were logically linked to a system that regulates the functioning of, *inter alia*, the regular compulsory inspection of the vessels falling under its remit. Consequently, in practice this meant that this Directive affected the companies that own and run these vessels. In fact, one of the main obligations under this EU legal instrument was the need for such companies and their ferries to be duly vetted and verified to ensure compliance with IMO safety standards.⁹

When still in force, the Directive envisaged that such an objective would be attained through a system of regular compulsory inspections conducted by host States. The outcome of the verifications and surveys were to be expeditiously notified in writing to the companies in question.¹⁰ Should such inspections reveal that a ferry or high-speed craft was not up to the established standards, then the Member State conducting such inspection was empowered to restrain those companies from operating such vessels.¹¹

Safety inspections stemmed from the obligation of host States to conduct a preliminary specific survey so as to attain satisfaction that the Ro-Ro ferry or high-speed passenger craft fully adhered to the mandatory criteria for the safe operation of such services.¹² Such inspection was to be carried out at the start of the ferry's operation or within 12 months of the date when Member States transpose such Directive into their national laws.¹³

Such harmonising rules, although applicable to the respective Member States, resulted in effects that were felt beyond the EU. Indeed, the Directive used to make it imperative for Member States to verify that third flag State administrations recognise the commitments taken up by companies operating such services to cooperate with any investigation of a marine casualty or incident.¹⁴ Such third flag administrations were to abide with the rules of Recognised Organisations for classification purposes.

⁹ Directive 1999/35/EC, Article 5.

¹⁰ *Ibid.*, Article 9.

¹¹ *Ibid.*, Article 10.

¹² *Ibid.*, Article 6.

¹³ *Ibid.*

¹⁴ *Ibid.*, Article 15.

Furthermore they were bound to allow for the use of harmonised survey and certification procedures.

All this showcases the trans-EU effects that this Directive had and this is unsurprisingly so given the international characteristics of marine transport services.¹⁵

2.1.1 Changes to Directive 1999/35/EC by Directive (EU) 2017/2110

Regardless of the fact that the particular inspection mechanism applicable to Ro-Ro vessels and high-speed craft under Directive 1999/35/EC remains essential, the criteria set under this instrument are out of sync with contemporary regulations. From the time when Directive 1999/35/EC came to be, the landscape has evolved considerably. One prominent change came in 2004 when there was a EU enlargement with the joining of 10 new Member States, including Malta.

Against this background, one of the main effects of Directive (EU) 2017/2110 was the complete repeal of Directive 1999/35/EC, which dealt with a system of mandatory surveys for the safe operation of regular Ro-Ro ferry and high-speed passenger craft services. Although Directive (EU) 2017/2110 repealed Directive 1999/35/EC, it introduced a number of new provisions that are exclusive to Ro-Ro vessels and high-speed passenger craft. For purpose of clarity, these new provisions – Articles 1 to 13 (both included) of Directive (EU) 2017/2110 – will be addressed first and will be transposed into Maltese Law through the enactment of a new S.L.

2.1.1.1 Articles 1 to 13 (both included) of Directive (EU) 2017/2110

Directive (EU) 2017/2110 stipulates in its Article 1(1) that it applies to Ro-Ro passenger ships and high-speed passenger craft operating on a regular service between the port of a Member State and the port of a third country where the flag of the vessel is the same as that of the Member State in question. Alternatively it applies to vessels

¹⁵ Ibid.

conducting regular domestic voyages in sea areas in which ships of Class A¹⁶ may operate in accordance with Article 4 of Directive 2009/45/EC.¹⁷ On the other hand, Article 1 of Directive (EU) 2017/2110 does not incorporate those vessels, which are subject to the PSC inspections executed under the auspices of Directive 2009/16/EC.¹⁸

Articles 3 and 5 of Directive (EU) 2017/2110 provide for a system of ship based, instead of company based, inspections prior to the commencement of a regular service. It should be highlighted that most Member States replaced or combined certain inspections that emanated from Directive 1999/35/EC with either Flag State surveys or PSC inspections. Such practice, together with the different scope of these inspections, diluted the effectiveness and enforcement of Directive 1999/35/EC.¹⁹

Furthermore, under Council Directive 1999/35/EC reference was made to 'surveys' instead of 'inspections'.²⁰ International conventions use the word survey to refer to the obligation of Flag States to monitor and ensure that the ships flying their flag adhere to the relative international standards and issue or renew, where relevant, certificates.²¹ However, the special inspection regime for Ro-Ro passenger vessels and high-speed passenger craft on regular service does not qualify as a survey.²² Moreover, the relevant inspection forms are not and cannot be considered to be seaworthiness certificates. Therefore, as per the new Directive, the term 'survey' should be replaced by 'inspection' when referring to specific surveys.

In relation to Articles 3 and 5, Directive (EU) 2017/2110 has also introduced the following Annexes: Annex I – The specific requirements for vessels in regular

¹⁶ According to Article 4 of Directive 2009/45/EC a Class A means *'a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.'*

¹⁷ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships.

¹⁸ Directive (EU) 2017/2110, Article 1.

¹⁹ 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 (2016) 2.

²⁰ Directive (EU) 2017/2110.

²¹ Ibid.

²² Directive (EU) 2017/2110, Recital 6.

service, Annex II - The procedures for inspections and Annex III - The procedures for carrying out inspections during a regular service. Article 4 also establishes the scenarios under which exceptions are applied to the pre-commencement inspection obligation.²³

There are also provisions relating to the inspection reports, prohibitions of departure, appeals, costs, the inspection database and penalties that are established under Articles 6 to 10 and 11.²⁴ Article 6 concerns the inspection report that must be drawn up by the inspector in accordance with Annex IX of Directive 2009/16/EC. The procedure concerning the rectification of deficiencies, prohibition of departure and suspension of inspection are catered by Article 7 and this procedure aims to ensure that such decisions are taken in light of the safety implications that may arise from the detected deficiencies or violations of safety standards. Moreover, such violations will lead to detentions through the issuance of an order of prohibition of departure and in this context Directive (EU) 2017/2110 affords a right of appeal, under Article 8, to the company/companies that own the detained vessels. The relative costs arising from such deficiencies are covered by the company owning the vessel as stated under Article 9, whilst Article 10 ensures that the information gathered in respect of such inspections is transferred without delay to the inspection database. Finally, Article 11 enables Member States to establish rules concerning the imposition of penalties to ensure compliance and implementation of the necessary corrective measures.

Furthermore, Directive (EU) 2017/2110 removed the notion of 'host state'. This is part of the removal of other references such as 'passenger', 'international voyages' and

²³ (1) In the case of pre-commencement inspections, a Member State may decide not to apply certain requirements or procedures in Annexes I and II relevant to any annual flag State survey or inspection carried out within the previous 6 months. (2) When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the Member State may take into account inspections and surveys previously carried out in respect of that ro-ro passenger ship or high-speed passenger craft for operation on another regular service covered by this Directive. Provided that the Member State is satisfied with those previous inspections and surveys and that they are relevant to the new operational conditions, the inspections provided for in Article 3(1) do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.

²⁴ Ibid.

'exemption certificate'. There is also the deletion of the investigation of marine casualties that now fall under the remit of Directive 2009/18/EC.²⁵

2.2 Port State Control under EU Law

As noted above, the implications of Directive (EU) 2017/2110 are twofold, namely that: it affects the regulation of Ro-Ro passenger vessels and high-speed passenger craft and also PSC. Therefore this section will focus on the PSC aspect and the corresponding EU Directives. However before delving into these changes, some comments must be afforded to the *raison d'etre* behind the promulgation of the PSC Directives at EU level.

2.2.1 Development of PSC Directives

Due to the ever-increasing number of maritime accidents at the time, together with the significant adverse implications that ensue, a number of Northern European States endeavoured to endorse the Paris Memorandum of Understanding (Paris MOU) in 1982.²⁶ This was the catalyst for the fight against under par vessels roaming European Seas. The Paris MOU served as the archetype for other MOUs that were established in other regions during the 1990s. It also served as the backbone for the three PSC Directives adopted by the European Union (EU) since 1995.²⁷

In general, PSC is based on the idea of targeted inspections, where a PSC regime ensures that ships calling at ports in the region are regularly inspected. If an inspected ship does not comply with the relevant standards it will be required to rectify the identified deficiencies before leaving port or within a fixed period of time. If the deficiencies are sufficiently serious, it may lead to the ship being detained.

²⁵ Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector (OJ L 131, 28.5.2009, p. 114).

²⁶ Armando Graziano et al. Port state control inspections in the European Union: Do inspector's number and background matter? (2017) <halshs-01649418> accessed on 5th February 2019.

²⁷ Ibid.

The main EU legislative instrument in this regard is Directive 2009/16/EC that aims to ensure that there is a harmonised, effective and efficient control of compliance and enforcement with relevant international and EU standards by ships, irrespective of their flag, in EU ports. Thus it is reasonable to consider the background behind Directive 2009/16/EC.

2.2.1.1 Directive 2009/16/EC

It is worth pointing out that one of the main reasons for the introduction of Directive 2009/16/EC was to recast and consolidate the existing regulations under Directive 1995/21/EC²⁸ that was the main legislative act at the time. This was done with the additional aim of simplifying and clarifying the existing legislation and to enable the inclusion of several new provisions in areas, which were not covered by PSC, such as maritime safety, so as to take note of the developments in international and EU law.²⁹

Consequently the main aims behind Directive 2009/16/EC are to: 1) improve safety, 2) prevent pollution to the environment, 3) ensure maritime security and 4) improve the on-board living and working conditions.³⁰ Furthermore this legal instrument endeavours to minimize the chances of competition amongst operators and also between ports situated in the EU from becoming distorted.

The need for a harmonised approach for enforcement of international standards is hence important in this regard. The Directive provides for a mechanism, which allows for the regular proliferation of information concerning companies who frequently underperform during PSC inspections.³¹ The issue of maritime security also extends to the shipping industry's vulnerability to acts of terrorism. Thus the Directive strives

²⁸ Directive 1995/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (Port State Control).

²⁹ Proposal for a Directive .../.../EC of the European Parliament and of the Council of [...] on Port State Control 2.

³⁰ European Commission, REFIT Evaluation of Directive 2009/16/EC on port State control, Evaluation Roadmap, 2016.

<http://ec.europa.eu/smartregulation/roadmaps/docs/2016_move_058_evaluation_port_state_control_en.pdf>

³¹ Directive 2009/16/EC, Article 27.

to ensure that transport security measures are effectively implemented and that Member States are bound to rigorously execute security checks by strictly adhering to the relevant security rules.³²

Directive 2009/16/EC now requires the inspection of all vessels that visit EU ports and which fall within its purview. There is a new inspection regime that is based on sophisticated individual Ship Risk Profiles (SRPs). Each vessel will be categorised as 'high risk', 'standard risk' or 'low risk'. The SRP will determine the frequency of the inspections. Therefore, 'high risk' ships are inspected every 5-6 months, 'standard risk' ships every 10-12 months and finally 'low risk' ships every 24-36 months.³³

Determining the SRP of a ship will largely depend on the performance of the Flag State. Directive 2009/16/EC establishes the criteria by which the Flag States are assessed.³⁴ This system provides for three main categories under which Flag States may be classified. These are black, grey or white lists and categorisation will mainly depend on the global number of inspections and detentions of ships flying the respective flag of a Flag State. Consideration is also afforded to the level of operational performance of the Flag State within the Paris MOU region over a three-year period. Such lists are updated on an annual basis.

Another element introduced by Directive 2009/16/EC is for the possibility of ships being inspected at the place of anchorage where the 'ship/port interface' takes place.³⁵ Finally, Directive 2009/16/EC has widened the refusal of access rule for multiple detentions so as to incorporate all ship types and grey listed Flag States. Furthermore, it provides that if a 'black listed' flagged ship has been detained more than twice during the previous 3 years, then that would give rise to an outright ban.³⁶ When it comes to 'grey listed' flagged ships, a ban will be handed down if the ship has been detained more than twice over the past 24 months. This novice PSC regime also

³² Proposal for a Directive .../.../EC of the European Parliament and of the Council of [...] on Port State Control 4.

³³ Report assessing the implementation and the impact of the measures taken according to the Directive 2009/16/EC on Port State Control 3.

³⁴ Directive 2009/16/EC, Article 10(3).

³⁵ Report assessing the implementation and the impact of the measures taken according to the Directive 2009/16/EC on Port State Control 4.

³⁶ *Ibid.*, 5.

introduced minimum banning terms: '3 months for the first ban, 12 months for a second ban and 24 months for a third ban.'³⁷ Should, after a third ban, the vessel suffer another detention, then that would lead to the imposition of a permanent ban from any port located in the EU.³⁸

Although progress was registered with the implementation of this Directive, the need for change still arose. In fact, Directive (EU) 2017/2110 has been adopted to make changes to Directive 2009/16/EC.

2.2.1.2 The effects of Directive (EU) 2017/2110 on Directive 2009/16/EC

Directive (EU) 2017/2110 amended Directive 2009/16/EC through its Article 14. With these amendments, a number of practical issues have been addressed, one of which relates to the surveys themselves. The Ro-Ro passenger vessels falling under the remit of Directive 1999/35/EC were already subject to bi-annual inspections, and thus according to Recital 22 of Directive 2009/16/EC such inspections are considered as contributing towards the satisfaction of the inspection quota established by the NIR.³⁹ Therefore, Directive (EU) 2017/2110 has amended Directive 2009/16/EC to ensure consistent and accurate inspections of Ro-Ro passenger ships and high-speed passenger craft⁴⁰ in accordance with the intervals established under Annex I.

Directive 2009/16/EC now also applies to inspections of Ro-Ro passenger ships and high-speed passenger craft that are carried out outside a port or away from an anchorage during a regular service. This process needs to be carried out in accordance with the procedure set out in Article 14a that is a completely new provision and an amendment in its own right. Article 14a is also supplemented with a new Annex entitled Annex XVII.⁴¹ With this change, prior to a Ro-Ro passenger ship or high-speed passenger craft starting to operate on a regular service falling under Directive 2009/16/EC, Member States are to conduct an inspection, in accordance with Article

³⁷ Ibid.

³⁸ Ibid.

³⁹ Biliiana Tzarnoretchka, 'Ex-Post Impact Assessment on the Implementation and Effects of the Third Maritime Safety Package' (2015) 95.

⁴⁰ Ibid.

⁴¹ Directive (EU) 2017/2110, Article 14a.

3(1) of Directive (EU) 2017/2110, to ensure that Ro-Ro passenger ship or high-speed passenger craft fulfill the requirements for the safe operation of a regular service.

One must also mention the applicability of the grounds for refusing access to Member State ports and anchorages to any ship falling foul of the grey and black lists as established under the Paris MOU. This system has been rendered applicable due to the amendments made to Article 16 of Directive 2009/16.

3. Malta's position in relation to Directive 1999/35/EC, Directive 2009/16/EC and Directive (EU) 2017/2110

As aforementioned, at EU level, Directive (EU) 2017/2110 has repealed Directive 1999/35/EC. Therefore S.L. 234.35, which transposes Directive 1999/35/EC *en bloc* into Maltese law, needs to be repealed *in toto*. Subsequently, the new provisions set out by Directive (EU) 2017/2110 (Articles 1 to 13) need to be transposed into Maltese law. Furthermore, as Directive 2009/16/EC is already transposed under Maltese law by means of S.L. 234.38 - Merchant Shipping (Port State Control) Regulations, S.L. 234.38 needs to be amended in order to bring it line with the changes put forward by Directive (EU) 2017/2110.

Malta has to ensure that such changes are implemented within the period set out for transposition of this Directive. In fact, Directive (EU) 2017/2110 states that: 'Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof. They shall apply those measures from 21 December 2019.'

It must be noted that unlike in the case of Regulations, Member States are given more discretion as to how to transpose Directives. Nevertheless, Malta is bound to implement this legal instrument. Once adopted and passed into EU law, Directives can also have the force of law even if they have not been transposed into national legislation. Hence, it is imperative that Malta updates its legislation to ensure that it is not only in line with EU law but also with important international conventions such as

the 1974 International Convention for the Safety of Life at Sea (SOLAS)⁴² in order to, inter alia, avoid the possibility of incurring State liability.

The total number of passengers embarking and disembarking in EU ports during 2014 was estimated at 400 million, of which 120 million passengers travelled between ports within a Member State. Furthermore, in 2015 Eurostat noted that 464 million tonnes of wheeled cargo was carried on-board ferries and Ro-Ros to and from the EU's main ports.

In the case of Malta, Grimaldi lines primarily conduct Ro-Ro ferry services with the main routes being: Catania-Malta, Genoa-Livorno-Malta, Salerno-Catania-Malta and Genoa-Catania-Malta. Furthermore, Grimaldi Lines is aiming to expand and modernise its fleet, by signing an agreement for the construction of six new Ro-Ro vessels, for a total investment worth over \$400 million. All this continues to emphasize the need for Maltese law to be updated according to the requirements adopted under Directive (EU) 2017/2110.

Further, the importance of updating Maltese law is significant since the PSC Directive continues to play a key role in the defence against substandard shipping operating in EU waters. Keeping abreast with such changes together with proper implementation of such laws will ensure that Malta maintains a solid PSC platform with which not only to adhere to EU standards but also to satisfy its international obligations. Striving for excellence in this field will also enhance Malta's reputation in the field of maritime safety.

4. Implementing Amendments to Maltese Law

The amendments brought about by Directive (EU) 2017/2110 will be introduced into Maltese law by means of two L.N.(s). The first L.N. will repeal S.L. 234.35 - Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and high-speed passenger craft services) Regulations and transpose Articles 1 to 13 by creating a new

⁴² International Convention for the Safety of Life at Sea (adopted on 1 November 1974, entered into force on 25 May 1980).

S.L. Another L.N. will amend S.L. 234.38 - Merchant Shipping (Port State Control) Regulations by transposing Articles 14 and 14a into the latter S.L. In order for these pieces of legislation to enter into force, the Minister for Transport, Infrastructure and Capital Projects, who has been delegated with relevant powers in this respect by the Merchant Shipping Act (Chapter 234 of the Laws of Malta), needs to approve them. Once approved, they will be published in the Government Gazette and they will consequently form part of Maltese law.

4.1 L.N. (No.) of 2019 - Merchant Shipping (System of inspections for the safe operation of Ro-Ro passenger ships and high-speed passenger craft in regular service) Regulations

This L.N. will introduce the relevant S.L, which will transpose Articles 1-13 of Directive (EU) 2017/2110. Regulation 2 will provide for definitions in order to incorporate references to Ro-Ro passenger vessels and high-speed passenger craft. These Regulations will also incorporate important processes such as the pre-commencement inspection (regulation 4) and the regular inspections (regulation 6). Such processes will ensure that any deficiencies are identified and will also determine whether the vessel in question merits the imposition of a prohibition of departure (regulation 8).

Should a vessel be prohibited to departure, regulation 9 affords a right of appeal to the companies owning the detained vessels. Nevertheless it will clearly state that any prohibition of departure order shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

Moreover, as per regulation 12, all data concerning these inspections is collated and transferred to a common EU inspection database. This will be important not only for statistical purposes but also as a means to gauge the situation of the Ro-Ro passenger ships and high-speed passenger craft over time and devise any improvements.

The Regulations will also enable the competent authority to lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to these

Regulations and shall take all measures necessary to ensure that they are implemented.

The Regulations will also include the respective Annexes as outlined under Directive (EU) 2017/2110. These Annexes supplement the inspection provisions and are reproduced accordingly.

Finally, the Regulations will repeal S.L. 234.35, which had transposed *in toto* Directive 1999/35/EC, which has now been repealed by Directive (EU) 2017/2110.

4.2 Amendments to S.L. 234.38 - Merchant Shipping (Port State Control) (Amendment No.3) Regulations

S.L. 234.38 was first enacted on 1 January 2011. It was then subject to two amendments in 2014 and thus this latest amended will be the third. This S.L. will transpose Articles 14 and 14a of the Directive (EU) 2017/2110. For this purpose, a number of new definitions will also be introduced so as to accommodate Article 14. Furthermore, the competent authority is mandated to ensure that ships that are selected for inspection are subject to an initial inspection or a more detailed inspection (Regulation 4). This is followed up by the inspection of Ro-Ro passenger ships and high-speed passenger craft in regular service (Regulation 14A).

Just like the previously mentioned S.L., this piece of legislation will make reference to the collation of data that will be kept in a common EU inspections database. Moreover, this S.L. incorporates the three main categories under which Flag States may be classified and under which the competent authority shall refuse vessels access to its ports and anchorages.

[S.L. __. _1

SUBSIDIARY LEGISLATION 234.XX

[Date]

LEGAL NOTICE ___ of 2019.

MERCHANT SHIPPING ACT (CAP. 234)

Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and high-speed passenger craft services) Regulations, 2019

IN exercise of the powers conferred by articles 154 and 374 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:-

1. The title of these regulations is the Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-speed passenger craft services) Regulations, 2019. These regulations adopt the measures contained in Articles 1 to 13 of Directive (EU) 2017/2110.
2. These regulations shall come into force on the [...] ⁴³
3. (1) In these regulations unless the context otherwise requires –

Definitions

“the Act” means the Merchant Shipping Act;

“administration of the flag State” means the competent authorities of the State whose flag the ro-ro passenger ship or the high-speed passenger craft is entitled to fly;

“certificates” means: (a) for ro-ro passenger ships and high-speed passenger craft engaged on international voyages, the safety certificates issued under SOLAS 74 or under the High Speed Craft Code respectively, together with the relevant attached records of equipment; (b) for ro-ro passenger ships and high-speed passenger craft engaged on domestic voyages, the safety certificates issued in accordance with Directive 2009/45/EC together with the relevant attached records of equipment;

⁴³ Such date is to be decided by the legislator.

“company” means the organisation or person who has agreed to take over all the duties and responsibilities imposed by the International Management Code for Safe Operation of Ships and for Pollution Prevention (the ISM Code) in its up-to-date version or, in cases where Chapter IX of SOLAS 74 does not apply, the owner of the ro-ro passenger ship or the high-speed passenger craft or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ro-ro passenger ship or the high-speed passenger craft from its owner;

“competent authority” means the Authority for Transport in Malta established under the Authority for Transport in Malta Act;

“Convention” means the 1974 International Convention for the Safety of Life at Sea, including Protocols and any amendments thereto, in its up-to-date version;

“domestic voyage” means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;

“Directive (EU) 2009/16” means Directive (EU) of the European Parliament and of the Council of 23 April 2009 on port State control (Recast).

“Directive (EU) 2017/2110” means Directive (EU) of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service.

“inspector” means a public-sector employee or other person, duly authorised by the competent authority to carry out the inspections provided for in this Directive, who is responsible to that competent authority and who fulfills the minimum criteria specified in Annex XI to Directive 2009/16/EC;

“High Speed Craft Code” means the ‘International Code of Safety for High Speed Craft’ contained in IMO Maritime Safety Committee Resolution MSC.36 (63) of 20 May 1994 or the International Code of Safety for High-Speed Craft, 2000 (2000 HSC Code), contained in IMO Resolution MSC.97 (73) of December 2000, in its up-to-date version;

“High-speed passenger craft” means a craft as defined in Regulation 1 of Chapter X of SOLAS 74, and carrying more than 12 passengers;

“HSSC” means the IMO Survey Guidelines under the Harmonized System of Survey and Certification, in its up-to-date version;

“Maltese Ship” shall have the same meaning as is assigned to it in Article 3 of the Act;

“Member State” means a Member State of the European Union;

“Minister” shall have the same meaning as is assigned to it in Article 2 of the Act;

“regular service” means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either: (a) according to a published timetable; or (b) with crossings so regular or frequent that they constitute a recognisable systematic series;

“ro-ro passenger ship” means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;

‘sea area’ means any sea area or sea route established pursuant to Article 4 of Directive 2009/45/EC;

4. (1) These regulations apply to ro-ro passenger ships and high-speed passenger craft operating:
 - (a) on a regular service between a port of Malta and a port of a third country and flying the Maltese flag; or
 - (b) on a regular service on domestic voyages in sea areas in which ships of Class A may operate in accordance with Article 4 of Directive 2009/45/EC of the European Parliament and of the Council (1) on safety rules and standards for passenger ships.
- (2) These regulations do not apply to ro-ro passenger ships and high-speed passenger craft falling under S.L. 234.38.
5. (1) Before a ro-ro passenger ship or high-speed passenger craft starts to operate on a regular service covered by these regulations, the competent authority shall carry out a pre-commencement inspection, consisting of:
 - (a) verification of the compliance with the requirements laid down in Annex I; and;

Pre-
commencement
inspection

(b) an inspection, in accordance with Annex II, to satisfy themselves that the ro-ro passenger ship or high-speed craft fulfils the necessary requirements for safe operation of a regular service.

(2) The pre-commencement inspection shall be carried out by an inspector.

(3) When requested by a Member State, companies operating in Malta shall provide evidence of compliance with the requirements of Annex I in advance of but not earlier than 1 month before the pre-commencement inspection.

6. (1) In the case of pre-commencement inspections, the competent authority may decide not to apply certain requirements or procedures in Annexes I and II relevant to any annual flag State survey or inspection carried out within the previous 6 months, provided that relevant procedures and guidelines for surveys specified in HSSC or procedures designed to achieve the same goal have been followed. The competent authority shall transfer the relevant information to the inspection database in accordance with regulation 12.

(2) When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the competent authority may take into account inspections and surveys previously carried out in respect of that ro-ro passenger ship or high-speed passenger craft for operation on another regular service covered by these regulations. Provided that the competent authority is satisfied with those previous inspections and surveys and that they are relevant to the new operational conditions, the inspections provided for in regulation 4(1) do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.

(3) At the request of a company, the competent authority may confirm in advance that they agree that the previous inspections and surveys are relevant to the new operational conditions.

(4) Where, due to unforeseen circumstances, there is an urgent need for the rapid introduction of a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and paragraph 2 does not apply, the competent authority may allow the ro-ro passenger ship or craft to start operating provided that the following conditions are met:

(a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfil the necessary requirements for safe operation; and

(b) the competent authority completes the pre-commencement inspection provided for in regulation 4(1) within 1 month.

7. (1) The competent authority shall once in every 12-month period, carry out:

Inspections

(a) an inspection, in accordance with Annex II; and

(b) an inspection during a regular service, taking place not before 4 months but not later than 8 months after the inspection referred to in point (a) and covering the items listed in Annex III and what, in the professional judgment of the inspector, constitutes a sufficient number of the items listed in Annexes I and II to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfill all the necessary requirements for safe operation. A pre-commencement inspection in accordance with regulation 4 shall be considered to be an inspection for the purposes of point (a).

(2) The inspection referred to in point (a) of paragraph 1 may, at the discretion of the competent authority, be carried out at the same time as, or in conjunction with, the annual flag State survey provided that the relevant procedures and guidelines for surveys as specified in HSSC or procedures designed to achieve the same goal are followed.

(3) The competent authority shall carry out an inspection in accordance with Annex II each time the ro-ro passenger ship or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change of management, or a transfer of class. However, in the case of a change of management, or transfer of class, the competent authority may, after taking account of inspections previously carried out in respect of the ro-ro passenger ship or high-speed passenger craft, and provided that the safe operation of the ro-ro passenger ship or craft is not affected by this change or transfer, exempt the ro-ro passenger ship or high-speed passenger craft from the inspection required by the first sentence of this paragraph.'

8. (1) On completion of any inspection carried out in accordance with these regulations, the inspector shall draw up a report in accordance with Annex IX to Directive 2009/16/EC.

Inspector's
Report

(2) The information contained in the report shall be communicated to the inspection database provided for in regulation 12. The master shall also be provided with a copy of the inspection report.

9. (1) The competent authority shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with these regulations are rectified.

Prohibition of
departure

(2) Where the deficiencies are clearly hazardous to health or safety or pose an immediate danger to health or life, the ro-ro passenger ship or high-speed passenger craft, its crew and passengers, the competent authority shall ensure that the ro-ro passenger ship or high-speed passenger craft is subject to an order prohibiting its departure ('a prohibition of departure order'). The master shall be provided with a copy of that order.

(3) The prohibition of departure order shall not be lifted until the deficiency has been rectified and the hazard has been removed to the satisfaction of the competent authority or until the competent authority has established that the ship or craft can, subject to any necessary conditions, proceed to sea or resume operation without risk to the safety and health of passengers or crew, or risk to the ro-ro passenger ship or high-speed passenger craft or other ships.

(4) If a deficiency referred to in paragraph 2 cannot be readily rectified in the port in which the deficiency has been confirmed or revealed, the competent authority may agree to allow the ship or craft to proceed to an appropriate repair yard where the deficiency can be readily rectified.

(5) In exceptional circumstances, where the overall condition of a ro-ro passenger ship or high-speed passenger craft is obviously substandard, the competent authority may suspend the inspection of that ship or craft until the company takes the steps necessary to ensure that the ro-ro passenger ship or high-speed passenger craft is no longer clearly hazardous to safety or health or no longer poses an immediate danger to the life of its crew and passengers or to ensure that it complies with the relevant requirements of applicable international conventions.

(6) Where the competent authority suspends the inspection in accordance with paragraph 5, the ro-ro passenger ship or high-speed passenger craft shall be automatically placed under a prohibition of departure order. The prohibition of departure order shall be lifted where the inspection has been resumed and successfully completed and where the conditions set out in paragraph 3 of this regulation and in regulation 11(2) have been complied with.

(7) In order to alleviate port congestion, the competent authority may allow a ro-ro passenger ship or high-speed passenger craft subject to a prohibition of departure order to be moved to another part of the port if it is safe to do so. However, the risk of port congestion shall not be a consideration when deciding whether to impose or to lift a prohibition of departure order. Port authorities or bodies shall facilitate the accommodation of such ships.

- 10.** (1) The company shall have a right of appeal against a prohibition of departure order issued by the competent authority. An appeal shall not suspend the

prohibition of departure order, unless interim measures are granted in accordance with national law. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation.

(2) The competent authority shall inform the master of the ro-ro passenger ship or high-speed passenger craft subject to a prohibition of departure order of the right of appeal and the applicable procedures. When, as a result of an appeal, a prohibition of departure order is revoked or amended, the competent authority shall ensure that the inspection database provided for in regulation 12 is updated accordingly without delay.

(3) An appeal against a decision for detention or refusal of access may be made by means of an application before the Court of Appeal (Inferior Jurisdiction).

(4) An appeal for the purpose of sub-regulation (3) shall be filed within twenty days of the service of the order of detention or stoppage of operation or the day of refusal of access, as the case may be, and shall be served on the competent authority, which shall reply thereto within ten days of notification.

(5) If the owner or the operator of a ship or his representative in Malta shows to the satisfaction of the Court that -

(a) the matter did not constitute a valid basis for the relevant inspector's opinion, and

(b) there were no reasonable grounds for the inspector to form that opinion, the Court may award the owner such compensation in respect of any actual loss suffered by him in consequence of the detention or refusal of access as it deems fit.

(6) The burden of satisfying the Court as to the matters specified in sub-regulation (5) shall lie with the owner or the operator of a ship or his representative in Malta, as the case may be.

(7) The Court shall also have regard, in coming to its decision, to any matters not specified in the order of detention or refusal of access order that appears to it to be relevant as to whether the ship was or was not liable to be detained or refused access.

(8) Where the Court decides that the matter did not constitute a valid basis for the inspector's opinion, it shall either cancel the order of detention or refusal of access or shall affirm the order with such modifications as it may in the circumstances deem fit.

(9) The Court shall include in its findings whether there was or not a valid basis for the order of detention or refusal of access.

(10) When as a result of an appeal or of a request made by the owner or the operator of a ship or his representative in Malta, a detention order or refusal of access order is revoked or amended; the competent authority shall ensure that:

(a) the inspection database is amended accordingly without delay, and

(b) within twenty-four hours of such decision, that the information is published in accordance with Annex XIII to the Directive.

11. (1) Where the inspections referred to in regulations 4 and 6 confirm or reveal deficiencies warranting a prohibition of departure order, all costs relating to the inspections shall be covered by the company.

(2) The prohibition of departure order shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

12. (1) The competent authority shall ensure that the information related to inspections carried out in accordance with these regulations, including information concerning deficiencies and prohibition of departure orders, is transferred without delay to the inspection database as soon as the inspection report is completed or the prohibition of departure order lifted. With regard to the particulars of the information, provisions of Annex XIII shall apply *mutatis mutandis*.

Inspection
database

(2) The competent authority shall ensure that the information transferred to the inspection database is validated for publication purposes within 72 hours.

(3) The competent authority shall have access to all the information recorded in the inspection database, which is relevant for implementing the inspection system provided for in these regulations and in Directive 2009/16/EC.

13. The competent authority shall apply the rules on penalties applicable to infringements of national provisions adopted pursuant to these regulations and shall take all measures necessary to ensure that they are implemented. The penalties provided for are found under S.L. 234.38.

Penalties

14. These regulations repeal S.L. 234.35.

Repeal

ANNEX I

SPECIFIC REQUIREMENTS FOR VESSELS IN REGULAR SERVICE (as referred to in Regulations 4 and 6)

The following shall be verified:

1. that the master is provided with appropriate information on the availability of shore-based navigational guidance systems and other information schemes to assist him in the safe conduct of the voyages, before the ro-ro passenger ship or high-speed passenger craft begins to sail, and that he makes use of the navigational guidance and information schemes set up by Member States;
2. that the relevant provisions of paragraphs 2 to 6 of MSC/Circular 699 of 17 July 1995 'Revised guidelines for passenger safety instructions' are applied;
3. that a table with the shipboard working arrangements is posted in an easily accessible place, and contains: (a) the schedule of service at sea and service in port; and (b) the maximum hours of work or the minimum hours of rest required for watchkeepers;
4. that the master is not constrained from taking any decision which in the master's professional judgment is necessary for safe navigation and operation, in particular in severe weather and in heavy seas;
5. that the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;
6. that any damage to, or permanent deflection of shell doors and associated hull plating that may affect the integrity of the ro-ro passenger ship or high-speed passenger craft, and any deficiencies in the securing arrangements of such doors, are promptly reported to both the flag State administration and the port State and are promptly repaired to their satisfaction;
7. that an up-to-date voyage plan is available before the departure of the ro-ro passenger ship or high-speed passenger craft on its voyage and that in preparing the voyage plan the guidelines set out in IMO Assembly Resolution A.893(21) of 25 November 1999 'Guidelines for voyage planning' are taken fully into account;
8. that general information about the services and assistance available to elderly and disabled persons on board is made known to the passengers and is made available in formats suitable for people with impaired sight.

ANNEX II

PROCEDURES FOR INSPECTIONS (as referred to in Regulations 4 and 6)

1. The inspections shall ensure that statutory requirements issued by or on behalf of the flag State, in particular those relating to construction, subdivision and stability, machinery and electrical installations, loading and stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods, radio communications and navigation are fulfilled. For that purpose, the inspections shall include:
 - the starting of the emergency generator,
 - an inspection of emergency lighting,
 - an inspection of the emergency source of power for radio-installations,
 - a test of the public address system,
 - a fire drill, including a demonstration of the ability to use firemen's outfits,
 - the operation of the emergency fire-pump with two firehoses connected to the fire main line in operation,
 - the testing of the remote emergency stop controls for fuel supply to boilers, main and auxiliary engines, and for ventilation fans,
 - the testing of remote and local controls for the closing of fire dampers,
 - the testing of fire detection and alarm systems,
 - the testing of proper closing of fire doors,
 - the operation of bilge pumps,
 - the closing of watertight bulkhead doors; both from the local and remote control positions,
 - a demonstration that shows that key crew members are acquainted with the damage control plan,
 - the lowering of at least one rescue boat and one lifeboat to the water, starting and testing their propulsion and steering system, and recovering them from the water into their stowed position on board,
 - the checking that all lifeboats and rescue boats correspond to the inventory,
 - the testing of the ship's or craft's steering gear and auxiliary steering gear.

2. Inspections shall focus on the familiarisation of crew members with, and their effectiveness in, safety procedures, emergency procedures, maintenance, working practices, passenger safety, bridge procedures and cargo and vehicle-related operations. Seafarers' ability to understand and, where appropriate, give orders and instructions and report back in the common working language, as recorded in the ship's logbook shall be checked. The documented evidence that crew members have successfully followed a special training shall be checked, in particular with regard to:

- crowd-management training,
- familiarisation training,
- safety training for personnel providing direct safety assistance to passengers in passenger spaces, and in particular to elderly and disabled persons in an emergency, and
- crisis management and human behaviour training.

The inspection shall include an assessment whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel.

3. Certificates of competency of crew members serving on board vessels falling within the scope of this Directive shall comply with the provisions of Directive 2008/106/EC of the European Parliament and of the Council.⁴⁴

⁴⁴ 30.11.2017 L 315/73 Official Journal of the European Union EN (1) Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33).

ANNEX III

PROCEDURES FOR CARRYING OUT INSPECTIONS DURING A REGULAR SERVICE (as referred to in Regulation 6)

When carrying out inspections during a regular service, the following shall be checked:

1. Passenger information

That the number of passengers for which the ro-ro passenger ship or high-speed passenger craft ('the ship') is certified is not exceeded, and that the registration of passenger information complies with Council Directive 98/41/EC (1). How the information on the total number of passengers is passed to the master and, if appropriate, how passengers undertaking a double crossing without going ashore are included in the total for the return voyage.

2. Loading and stability information

That, when applicable, reliable draught gauges are fitted and are in use. That measures are taken to ensure that the ship is not overloaded and the appropriate subdivision load line is not submerged. That the loading and stability assessment is carried out as required. That goods vehicles and other cargo are weighed where required and the figures passed to the ship for use in the loading and stability assessment. That damage control plans are permanently exhibited and that booklets containing damage control information are provided for the ship's officers.

3. Security for sea

That the procedure to ensure that the ship is secured for sea before leaving the berth, which should include a positive reporting procedure that all the shell watertight and weather-tight doors are closed is followed. That all the vehicle deck doors are closed before the ship leaves the berth or remain open long enough only to enable the bow visor to be closed, the closing arrangements for the bow, stern and side doors, and the provision of indicator lights and TV surveillance to show their status on the navigating bridge. Any difficulties with the operation of the indicator lights, particularly the switches at the doors, should be ascertained and reported.

4. Safety announcements

That the form of routine safety announcements and the posting of instructions and guidance on emergency procedures occurs in the appropriate language or languages. That the routine safety announcement takes place at the commencement of the voyage

and can be heard in all public spaces, including open decks, to which passengers have access.

5. Log book entries

That the log book is examined to ensure that the entries are being made regarding the closing of the bow, stern and other watertight and weather-tight doors, drills for subdivision watertight doors, testing of steering gears, etc. Also that draughts, freeboard and stability are being recorded as well as the common working language for the crew.

6. Dangerous goods

That any cargo of dangerous or polluting goods is carried in accordance with the relevant regulations and, in particular, that a declaration concerning dangerous and polluting goods is provided together with a manifest or stowage plan to show their location on board, that the carriage of the particular cargo is permitted on passenger ships, and that the dangerous and polluting goods are properly marked, labelled, stowed, secured and segregated.

That vehicles carrying dangerous and polluting goods are properly placarded and secured. That, when dangerous and polluting goods are carried, a copy of the relevant manifest or stowage plan is available ashore. That the master is aware of the notification requirements under Directive 2002/59/EC of the European Parliament and of the 30.11.2017 L 315/74 Official Journal of the European Union EN (1) Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35). Council (1) and of the instructions on the emergency procedures to be followed and the rendering of first aid should there be an incident involving the dangerous goods or marine pollutants. That the means of ventilating the vehicle decks is in use at all times, is increased when the engines of the vehicles are running and that there is some form of indication on the bridge to show that the vehicle deck ventilation is in operation.

7. Securing freight vehicles

How freight vehicles are secured, for example, whether block stow or individual lashings. Whether sufficient strong points are available. The arrangements for securing freight vehicles when adverse weather is experienced or expected. The method of securing coaches and motor cycles, if any. That the ship has a cargo securing manual.

8. Vehicle decks

Whether special category and ro-ro cargo spaces are being continuously patrolled or monitored by a TV surveillance system so that the movement of vehicles in adverse weather and the unauthorised entry of passengers may be observed. That fire doors and entrances are kept shut and that notices are posted to keep passengers off the vehicle decks whilst the ship is at sea.

9. Closure of watertight doors

That the policy laid down in the ship's operational instructions for the sub-division watertight doors is being followed. That the required drills are being carried out. That the bridge control for the watertight doors is kept, when possible, on 'local' control. That the doors are being kept closed in restricted visibility and any hazardous situation. That crews are instructed in the correct way to operate the doors and are aware of the dangers of their misuse.

10. Fire patrols

That an efficient patrol is being maintained so that any outbreak of fire may be readily detected. This should include special category spaces where no fixed fire detection and alarm system is fitted. Those spaces may be patrolled as indicated in point 8.

11. Communications in an emergency

That there are sufficient crew members in accordance with the muster list to assist passengers in an emergency and that they are readily identifiable and able to communicate with the passengers in an emergency, taking into account an appropriate and adequate combination of any of the following factors:

- (a) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
- (b) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance if the passenger and crew Member do not share a common language;
- (c) the possible need to communicate during an emergency by other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes when verbal communication is impractical);

- (d) whether complete safety instructions have been provided to passengers in their native language or languages;
- (e) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers.

12. Common working language between crew members

That a working language has been established to ensure effective crew performance in safety matters and that this working language is recorded in the ship's logbook. 30.11.2017 L 315/75 Official Journal of the European Union EN (1) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

13. Safety equipment

That the live-saving and fire appliances, including the fire doors and other items of the structural fire protection that can be readily inspected, are being maintained. That fire control plans are permanently exhibited or booklets containing the equivalent information are provided for the information of the ship's officers. That the stowage of the lifejackets is appropriate and that the stowage of children's lifejackets may be readily identified. That the loading of vehicles does not prevent the operation of the fire controls, emergency shut-offs, controls for the storm valves, etc. that may be located on the vehicle decks.

14. Navigational and radio equipment

That the navigational and radio communications equipment, including emergency position-indicating radio beacons (EPIRBs), are operational.

15. Supplementary emergency lighting

That supplementary emergency lighting is fitted, when required by the regulations, and that a record of deficiencies is being kept.

16. Means of escape

That means of escape, including escape routes, are marked, in accordance with the applicable requirements, and lighted, from both the main and emergency sources of power. That measures are taken to keep vehicles clear of escape routes where those escape routes cross or pass through vehicle decks. That exits, particularly exits from

duty free shops, which have been found to be blocked by an excess of goods, are kept clear.

17. Engine room cleanliness

That the engine room is maintained in a clean condition in accordance with the maintenance procedures.

18. Garbage disposal

That the arrangements for the handling and disposal of garbage are satisfactory.

19. Planned maintenance That all companies have specific standing orders, with a planned maintenance system, for all safety related areas including bow and stern doors and side openings, together with their closing arrangements, but also covering engine room maintenance and safety equipment. That there are plans in place for periodically checking all items so as to maintain safety standards at the highest level. That there are procedures in place for recording deficiencies and confirming they have been properly rectified so that the master and the designated person ashore within the company management structure are aware of the deficiencies and are notified when they have been rectified within a time specified. That periodic checking of the operation of the inner and outer bow door closing arrangements includes the indicators, surveillance equipment and any scuppers in the spaces between the bow visor and the inner door and especially the closing mechanisms and their associated hydraulic systems.

19. Making a voyage

When making a voyage the opportunity should be taken to check overcrowding, including the availability of seats and the blocking of passageways, stairs and emergency exits by baggage and by passengers unable to find seats. It is necessary to check that the vehicle deck is vacated by passengers before the ship sails and that they do not again have access until immediately prior to docking.

ANNEX IV

CORRELATION TABLE

Directive 1999/35/EC	This Directive
Article 1	—
Article 2, points (a), (b), (d), (e), (f), (g), (h), (j), (m), (o), (r)	Article 2, points (1), (2), (3), (4), (6), (7), (8), (9), (10), (11), (12)
Article 2, points (c), (i), (k), (l), (n), (p), (q), (s)	—
Article 3	Article 1
Article 4	—
Article 5, point (1)(a)	Article 3
Article 5, points (1)(b), (2)	—
Article 6	Article 3
Article 7	Article 4
Article 8(1)	Article 5(1)
Article 8(2)	Article 5(3)
Article 8(3)	Article 9(1)
Article 9	Article 6
Article 10(1)(a), (b), (c),	Article 7
Article 10(1)(d)	—
Article 10(2)	Article 7
Article 10(3)	Article 8
Article 10(4)	—
Article 11(1), (2), (3), (4), (5), (7), (8)	—
Article 11(6)	Article 6(1)
Article 13(1), (2), (4), (5)	—
Article 13(3)	Article 6(2) and Article 10
Article 14	—
Article 15	—
Article 16	—
Article 17	Article 12
Article 18	Article 11
Article 19	Article 17
Article 20	Article 16
Article 21	Article 18
Article 22	Article 19
Annex I	Annex I

MERCHANT SHIPPING ACT (CAP. 234)

MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS

[Date]

LEGAL NOTICE 64 of 2011, as amended by Legal Notices 25 and 156 of 2014 and *legal notice* __ of 2019

**Merchant Shipping (Port State Control)
(Amendment No. 3) Regulations, 2019**

IN exercise of the powers conferred by articles 154 and 374 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:-

1. These regulations amend S.L. 234.38

(1) The title of these regulations is the Merchant Shipping (Port State Control) (Amendment No. 3) Regulations.

(2) These regulations adopt the measures contained in Articles 14 and 14a of Directive (EU) 2017/2110.

(3) For the purpose of these regulations:

(i) “Directive (EU) 2017/2110” means Directive 2017/2110 of the European Parliament and of the Council of 15 November 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.

(ii) “principal regulations” mean the Merchant Shipping (Port State Control) Regulations adopted by Legal Notice 64 of 2011, as amended by Legal Notices 25 and 156 of 2014.

2. Regulation 2 shall be amended by adding the following new definitions:

The definition of “the Directive” shall be followed by:

(i) “high-speed passenger craft” means a craft as defined in Regulation 1 of Chapter X of SOLAS 74, and carrying more than 12 passengers;

The definition of “Member State” shall be followed by:

(ii) “regular service” means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same

Amends
regulation 2 of
the principal
regulations.

two or more ports, or a series of voyages from and to the same port without intermediate calls, either: (i) according to a published timetable; or (ii) with crossings so regular or frequent that they constitute a recognisable systematic series;;

- (iii) “ro-ro passenger ship” means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;

3. Regulation 3(1), shall be amended by adding the following subparagraph:

These regulations shall also apply to inspections of ro-ro passenger ships and high-speed passenger craft carried out outside a port or away from an anchorage during a regular service in accordance with regulation 14A.

Amends regulation 3 of the principal regulations.

4. Regulation 13(1) shall be replaced with the following:

The competent authority shall ensure that ships which are selected for inspection in accordance with regulation 7 or regulation 14A are subject to an initial inspection or a more detailed inspection as follows:

Amends regulation 13 of the principal regulations.

5. Immediately after regulation 14, there shall be added regulation 14A:

(1) Ro-ro passenger ships and high-speed passenger craft operating on a regular service are eligible for inspections in accordance with the time frame and other requirements set out in Annex XVII.

Amends regulation 14 of the principal regulations.

(2) The competent authority shall, when planning inspections of a ro-ro passenger ship or high-speed passenger craft, take due account of the operational and maintenance schedule of the ro-ro passenger ship or high-speed passenger craft.

(3) When a ro-ro passenger ship or high-speed passenger craft has been subject to an inspection in accordance with Annex XVII, such inspection shall be recorded in the inspection database, and shall be taken into account for the purposes of regulations 6, 7 and 4 and for calculating the fulfillment of the inspection commitment of Malta.

(4) It shall be included in the total number of annual inspections carried out by the competent authority, provided for in regulation 9.

(5) Regulation 5(1), regulation 7(a) and regulation 9 shall not apply to ro-ro passenger ships and high-speed passenger craft on a regular service inspected under this regulation.

(6) The competent authority shall ensure that the ro-ro passenger ships or high-speed passenger craft that are subject to an additional inspection in accordance with regulation 7(b) are selected for inspection in accordance with Annex I, Part II 3A(c) and 3B(c). Inspections carried out under this paragraph shall not affect the inspection interval provided for in paragraph 2 of Annex XVII.

(7) The inspector of the competent authority of the port State may agree to be accompanied, during an inspection of a ro-ro passenger ship or high-speed passenger craft, by a port State inspector of another Member State acting as an observer. Where the flag of the vessel is that of a Member State, the port State shall, upon request, invite a representative of the flag State to accompany the inspection as an observer.

6. Regulation 15 sub-regulation (3) shall be removed.

7. Regulation 16 sub-regulation (1) shall be amended to read as follows:

The competent authority shall refuse access to its ports and anchorages to any ship which:

- flies the flag of a State whose detention rate falls into the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission, and has been detained more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU, or'
- flies the flag of a State whose detention rate falls into the grey list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission, and has been detained more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

The first subparagraph shall not apply to the situations described in Article 21(6) of Directive (EU) 2009/16.

The refusal of access shall be applicable as soon as the ship leaves the port or anchorage where it has been the subject of a third detention and where a refusal of access order has been issued.

8. These regulations shall include a '*ANNEX XVII*' concerning the inspection of Ro-Ro passenger ships and high-speed passenger craft on a regular service in accordance with Directive (EU) 2017/2110.

ANNEX XVII

Inspection of ro-ro passenger ships and high-speed passenger craft on a regular service

- 1.1. Before a ro-ro passenger ship or high-speed passenger craft starts to operate on a regular service covered by this Directive, Member States shall carry out an inspection, in accordance with Article 3(1) of Directive (EU) 2017/2110 (*⁴⁵), to ensure that that ro-ro passenger ship or high-speed passenger craft fulfills the necessary requirements for the safe operation of a regular service.
- 1.2. When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the Member State concerned may take into account inspections carried out within the last 8 months by another Member State in respect of that ro-ro passenger ship or high-speed passenger craft for operations on another regular service covered by this Directive, provided that the Member State is satisfied in every case that those previous inspections are relevant to the new operational conditions and that during those inspections the necessary requirements for the safe operation of a regular service were fulfilled. The inspections provided for in point 1.1 do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.
- 1.3. Where, due to unforeseen circumstances, there is an urgent need for the rapid introduction of a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and point 1.2 is not applicable, the Member State may allow the passenger ship or craft to start operating provided that the following conditions are met:
 - (a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfill the necessary requirements for safe operation; and
 - (b) the Member State completes the inspection provided for in Article 3(1) of Directive (EU) 2017/2110 within 1 month.
2. Member States shall, once per year, but not before 4 months and not later than 8 months following the previous inspection, carry out:

⁴⁵ (*) Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 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 (OJ L 315, 30.11.2017, p. 61).

(a) an inspection, including the requirements of Annex II to Directive (EU) 2017/2110 and of Commission Regulation (EU) No 428/2010 (**⁴⁶) as applicable; and

(b) an inspection during a regular service. This inspection shall cover the items listed in Annex III to Directive (EU) 2017/2110 and what, in the professional judgment of the inspector, constitutes a sufficient number of the items listed in Annexes I and II to Directive (EU) 2017/2110, to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfill all the necessary requirements for safe operation.

3. Where a ro-ro passenger ship or high-speed passenger craft has not been inspected in accordance with point 2, the ro-ro passenger ship or high-speed passenger craft shall be considered to be Priority I.
4. An inspection in accordance with point 1.1 shall be considered to be an inspection for the purposes of point 2(a) of this Annex.

⁴⁶ (**) Commission Regulation (EU) No 428/2010 of 20 May 2010 implementing Article 14 of Directive 2009/16/EC of the European Parliament and of the Council as regards expanded inspections of ships (OJ L 125, 21.5.2010, p. 2).