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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and amending Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States

{SWD(2016) 189 final}
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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Reasons for and objectives of the proposal

In the spirit of the Commission's REFIT and Better Regulation agenda and as an immediate follow-up to the fitness check on EU passenger ship safety legislation¹, the Commission puts forward a set of proposals to bring about the identified simplification potential.

The objectives of this revision are 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.

Council Directive 98/41/EC² provides for counting and registration of passengers and crew on board of passenger ships operating to and from the EU ports. It aims to ensure that the safety of passengers is not compromised by exceeding the maximum authorised number of persons on board and that search and rescue in the aftermath of any accident can be dealt with effectively.

Directive 98/41/EC was the first EU piece of legislation dealing with information on persons on board. Since 1998, however, other pieces of EU law and international conventions dealing with related issues have entered into force and new technological systems and solutions have been developed. This has resulted in increasingly complex and overlapping legal provisions dealing with the counting, registration and reporting of persons on board.

Although an effective search and rescue operation requires immediate access to accurate data as regards the persons on board, this has not always proved to be the case in practice. According to the current requirements, this information has to be stored in the company's system and be – at all times – readily available for transmission to the competent authority responsible for search and rescue. This requirement, dating to 1998, ignores the development of systems such as SafeSeaNet³ and the National Single Window⁴ and requires that the national competent authority contacts the shipping company in the event of an emergency. Moreover, the recorded data does not always include information on nationality (i.e. besides name, age and sex), making the assistance provided to victims and their relatives more difficult.

As a result, operators that already transmit such data to the National Single Window are exposed to double reporting regime. This has been pointed out by those Member States who

¹ The results of which have been reported to the European Parliament and the Council on 16 October 2015 (COM(2015)508).

² 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).

³ 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).

⁴ Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

in practice already make use of the Directive 2002/59/EC to fulfil their Directive 98/41/EC obligations. Furthermore, the implementation experience has revealed a number of ambiguous definitions and rather complex requirements, making some of the provisions difficult to monitor and enforce.

It is therefore proposed to update, clarify and simplify the existing requirements for counting and registration of passengers and crew on board passenger ships while enhancing the level of safety they provide for. This is fully in line with the Commission's REFIT programme and aims to exploit the digitalisation potential of recording, transmitting, accessing and protecting data.

The proposal amends the corresponding definitions and requirements of Directive 98/41/EC.

1.2 Consistency with existing policy provisions in the policy area

The proposal is fully consistent with the simplification proposals amending Directives 2009/45/EC of the European Parliament and of the Council⁵ and the new Directive replacing Council Directive 1999/35/EC⁶. The proposal is fully in line with the fitness check recommendations and the 2011 White Paper for the future of transport⁷ that recognised the need to modernise the current EU passenger ship safety legislative framework.

1.3 Consistency with other Union policies

The proposal delivers on the Commission's Better Regulation agenda by ensuring that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political, societal and technological developments. It also delivers on the goals of the 2018 Maritime Transport Strategy⁸ by ensuring quality ferry services in regular intra-EU passenger transport.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1 Legal basis

Given that the proposal replaces the current Directive, the legal base remains Article 100(2) TFEU (ex Article 80(2) TEC), providing for measures in the field of sea transport.

2.2 Subsidiarity

On request of the Member States⁹, the EU passenger ship safety legislation has been mainly modelled and shaped on the international requirements and in reaction to a number of major accidents. Although requirements concerning information on passengers have been adopted at international level, this was not the case for passenger ships operating on domestic voyages.

⁵ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

⁶ Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services (OJ L 138, 1.6.1999, p. 1).

⁷ White Paper 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM/2011/0144).

⁸ 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).

⁹ Council Resolution of 22 December 1994 on the safety of ro-ro passenger ferries, (94/C 379/05), O.J. No C379 of 31.12.94, p.8.

The proposal ensures a common and coherent application of registration requirements established by Directive 98/41/EC for all ships operating to and from EU ports, which could not be achieved by unilateral action at the level of Member States. It ensures that Directive 98/41/EC keeps pace with legal and technological developments and therefore continues to enhance the safety and to facilitate search and rescue operation if an accident occurs.

The proposal also guarantees that competition continues to take place on an equal footing in EU waters for all operators irrespective of their nationality or the flag their ships and craft fly and without a distinction between international and domestic journeys. At the same time, the proposal clarifies the conditions for derogating from the requirements of Directive 98/41/EC where local operating conditions may so require.

2.3 Proportionality

In view of the latest technological and legal developments, the proposal to remove outdated requirements, remove overlaps and clarify ambiguous requirements is considered as the only proportionate and coherent option. It ensures that the current high level of safety is maintained and further enhanced by using the means of electronic data transmission.

More specifically, the requirement to record the information on the persons on board in an existing electronic system (that in the event of an emergency allows the data to be immediately accessed by the competent authority) is considered to present a leap forward in comparison to the current safety level, without generating significant costs for operators or national administrations.

In this context, the requirement to approve passenger registration systems has proven to generate significant workload for some national administrations. Such workload, and the corresponding costs, have been evaluated as clearly excessive, namely vis-à-vis its narrow scope, given its partial overlap with the ISM code and given the difficulty to verify the approval in the absence of any certificates. The requirement for company passenger registration systems should be removed and focus oriented on the registration performance, i.e. on the accuracy and timeliness of recording the data in existing electronic systems.

As the experience has also shown, it is of utmost importance to have available from the very early stage of a post-accident phase not only the number and the list of persons on board but also their nationality. It is therefore proposed to register such information on the basis of a self-declaration of passengers, as it is currently the case for other information. This will ensure that those operators currently not recording such information face none or marginal cost of such additional data entry.

2.4 Choice of the instrument

In accordance with the principle of proportionality, a Directive remains to be considered as the most suitable form for achieving the identified objectives. It establishes common principles and a harmonised level of safety, ensures the enforcement of the rules, but leaves the choice of practical and technical procedures to be applied to each Member State. In doing so, it leaves the responsibility to each Member State to decide on the implementation tools which best fit its internal system.

In this regard, the most adequate legal solution was found to be a proposal amending Directive 98/41/EC. Alternative option of proposing a new Directive was discarded on the basis of the limited number of clearly identifiable changes to the current Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1 Ex-post evaluations/fitness checks of existing legislation

Fitness check showed that the key objectives of the EU passenger ship safety legislation related to passenger safety and internal market are being overall met and remain highly relevant. The EU passenger ship safety legal framework resulted in a common level of safety for passenger ships within the EU and a level playing field between operators as well as increased transfer of ships between Member States. The fitness check also showed that there is scope for further enhancing the level of safety as well as the efficiency and proportionality of some of the regulatory requirements. Recommendations to simplify, clarify and repeal a number of ambiguous, outdated or overlapping requirements have been made in a number of areas:

- (a) Eliminate double reporting of passengers requirements and align the existing reporting requirements for all operators by providing for:
 - Recording the information on the number of persons on board in an existing electronic system that in the event of an emergency or accident allows for an immediate transmission of data to the competent authority instead of in the company system, before departing and before arriving to any EU port of call.
 - Recording – for every voyage beyond 20 nautical miles – of the required information on crew and passengers in the same system as above instead of in the company system, before departing and before arriving to any EU port of call. Clarify the definitions of passenger registration requirements in Directive 98/41/EC, such as length of the voyage.
- (b) Avoid overlaps and require – for every voyage beyond 20 nautical miles – the nationality of passengers to be registered and transmitted to the competent authority, using the same means and criteria as the ones in place for recording and transmitting the already required data on name, age, etc.
- (c) Clarify the definitions of passenger registration requirements in Directive 98/41/EC, such as length of the voyage.
- (d) Eliminate from Directive 98/41/EC the requirement for the approval of the passenger registration systems.
- (e) Streamline the reporting mechanism of exemptions/equivalencies under Directive 2009/45/EC and Directive 98/41/EC.

3.2 Stakeholder consultations

Given the technical nature of the envisaged proposals, a targeted consultation has been chosen as the most adequate tool. National experts have been consulted in the framework of the Passenger Ship Safety Expert Group. A workshop was organised where the Member States as well as industry and passenger associations were invited to participate. The envisaged measures were presented on numerous occasions. In addition, the roadmap published on the Europa website¹⁰ allowed all stakeholders to provide feedback by means of an online response form.

¹⁰ http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm.

The consultation summary as well as detailed feedback on comments raised during the consultation process is provided in the Staff Working Document accompanying the proposal. The envisaged simplification measures were supported by the large majority of national experts, albeit a number of comments have been made with respect to exact wording of some of the proposals. All suggestions have been therefore carefully reviewed and proposals amended as appropriate. In addition, some experts raised questions concerning practical and technical implementation aspects, which have been addressed in the Staff Working Document accompanying the proposal and are embedded in the Implementation Plan.

Stakeholders from industry insisted that the key principles of the current legal framework remained unchanged (namely in relation to the self-declaration of passenger data) while the passenger association called for upgrading the safety level and warned against its dilution. The proposal therefore ensures that the existing level of safety is maintained and, to the extent possible within the simplification framework, increased (e.g. by exploiting the existing electronic systems and clarifying how the 20 nautical miles threshold should be calculated).

3.3 Collection and use of expertise

This review builds primarily on the data collected during the fitness check process as reported in the Commission Staff Working Document 'Adjusting course: EU Passenger Ship Safety Legislation Fitness Check', adopted on 16 October 2015¹¹.

In addition to the data and consultation carried out in the framework of the fitness check, the preparation of this simplification proposal necessitated an input from technical and legal experts regarding the concrete formulation of technical definitions and a clear legal drafting. This expertise was gathered internally, in cooperation with the European Maritime Safety Agency and the Passenger Ship Safety Expert Group. It is reported on in the Staff Working Document accompanying the proposal.

3.4 Impact assessment

The proposal is an immediate follow-up to the fitness check that identified the issues for simplification in detail and assessed the simplification potential. As highlighted in the roadmap, the envisaged measures are either not expected to generate any significant impacts (i.e. beyond those that are non-measurable such as legal clarity, certainty or simplicity) or no materially different solutions have been identified. In line with the Commission's Better Regulation Guidelines, a fully-fledged impact assessment has not been carried out.

Nonetheless, the simplification proposal is accompanied by a Commission Staff Working Document that recalls the recommendations of the fitness check and explains the rationale of the proposed solutions from the technical as well as legal perspective. It includes a summary and a feedback on the stakeholder consultation carried out in support of this initiative. An implementation plan is also attached.

3.5 Regulatory fitness and simplification

To ensure that the existing legislation is fit for purpose is the main objective of this proposal. Using the available means of electronic communication will allow achieving the policy objectives more effectively and efficiently. The simplification potential primarily consists of

¹¹ SWD(2015)197.

removing overlaps in reporting obligations, disproportionate requirements and of non-measurable impacts such as legal clarity, certainty and simplicity.

The double reporting requirements for operators that already transmit passenger and crew data to the National Single Window provide an additional and unnecessary burden for the industry. A lighter regime is envisaged for those (in principle smaller) operators that do not yet use the systems mentioned above. These companies operate mainly on very short domestic voyages (i.e. recording information only on the number of persons on board) and do not have computer systems or internet connection.

To neutralise any possible cost increase for these operators, it is envisaged that they would have a choice to transmit the number of persons on board via the Automatic Information System, a maritime broadcast system based on the transmission of very high frequency radio signals. This would allow the local search and rescue centre to easily retrieve the number of persons on board, at any point of time, regardless of the availability of a contact person.

Member States will be dispensed of approving the company passenger registration systems, albeit they will remain responsible for ensuring that the information is collected and recorded electronically in an accurate and timely manner.

3.6 Fundamental rights

The proposal does not add additional categories or change the categories of personal data that have to be collected and recorded according to the existing requirements of Directive 98/41/EC. The only exception in this respect is the information on nationality of persons on board that is for the reasons explained above proposed to be added to the information already recorded (i.e. the family names of the persons on board, their forenames or initials, their gender, an indication of the category of age to which each person belongs, or the age, or the year of birth, and when volunteered by a passenger, information concerning the need for special care or assistance in emergency situations).

Nonetheless, Directive 98/41/EC needs to be modernised in correspondence with the legal developments in the area of personal data protection, in particular Regulation (EU) No XXX/2016¹². In this regard, although the categories of data, purpose and recipients are clearly identified, the data retention period is not. Directive 98/41/EC requires that the company should not keep personal data longer than necessary for the purposes of this Directive, but does not indicate how long such period should be. The implementation experience has shown that the data retention period importantly differs across Member States – ranging from hours, weeks to months after the voyage has been (successfully) completed. It is therefore proposed to establish the retention period in this Directive (without prejudice to other legal requirements where such data is collected for different purposes with different retention period).

Furthermore, although the Directive stipulates that the company registration systems have to be protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access, it does not refer to EU law on the protection of personal data and does not include any guarantees regarding the accessibility of personal data. In this respect, the proposal is considered to provide for major improvement in the protection of personal data.

¹² Reference to be added after adoption.

In addition, the proposal replaces the requirement to store personal data by the company by the requirement to transmit such data to an existing electronic system designed for such purpose (and to delete personal data when the transmission has been completed). The proposed transmission to the National Single Window caters for the confidentiality requirements (as defined in Article 8 of Directive 2010/65/EU) and complies with EU law on the protection of personal data. It equally provides for the restricted accessibility of such data that is to be provided to the relevant national authorities upon request (the exchange mechanism in the event of an emergency or in the aftermath of an accident being the SafeSeaNet system as defined in Directive 2002/59/EC). Equally to the National Single Window, the SafeSeaNet is driven by EU law on protection of personal data and provides for clearly defined security and access rights.

The relevant national authorities to whom access shall be granted for the purpose of this Directive are authorities for search and rescue designated by Member States. Upon request, in the event of an emergency or in the aftermath of an accident, the search and rescue authorities shall have immediate access to the information reported in accordance with Directive 98/41/EC.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

5. OTHER ELEMENTS

5.1 Implementation plans and monitoring, evaluation and reporting arrangements

The proposal is accompanied by an implementation plan that lists the actions needed to implement the simplification measures and identifies the main technical, legal and time-related implementation challenges.

Adequate monitoring and reporting arrangements have been identified, without creating new reporting obligations and administrative burdens. The key information on fleet, accidents and compliance will be collected with the assistance of EMSA, Passenger Ship Safety Expert Group and on the basis of the European Marine Casualty Information Platform (EMCIP) database. Given that the full cycle of the envisaged EMSA implementation visits is estimated to last 5 years, the evaluation cycle of the EU passenger ship safety legislation should be set at 7 yearly intervals.

5.2 Explanatory documents

Explanatory documents are not required as the simplification measures are not of substantial or complex nature.

5.3 Detailed explanation of the specific provisions of the proposal

Definitions and scope

Article 2 is amended to align as far as possible the definitions with the proposal amending Directive 2009/45/EC and with the proposal for a new Directive replacing 1999/35/EC and to align the responsibility of the passenger registrar with the proposal to remove the requirement for the information required by this Directive to be retained by the company.

Article 3 is amended to clarify the scope of the Directive and to bring it in line with the definition of port areas as defined in accordance with the proposal amending Directive 2009/45/EC.

Information on persons on board

Article 4 is amended to replace the requirement to store the information on the number of persons on board in the company by recording it in the National Single Window or transmission by means of Automatic Identification System.

Article 5 is amended to introduce the information on nationality of persons on board and to replace the requirement to store the lists of passengers and crew by the company by recording it in the National Single Window. The list of required data entries is simplified, clarified and aligned as far as possible with reporting requirements into the National Single Window.

Article 6 is amended to align the reference with the proposed means of data transmission and to clarify the responsibilities of Member States with respect to passenger ships flying the flag of a third country.

Companies

Article 8 is amended to reflect the new role of the passenger registrar (i.e. not to store but to transmit the data) and to remove the requirement to set up a company passenger registration system. It is also amended to reflect EU law on protection of personal data and specifies that personal data shall be destroyed by the company once transmitted to the single window (without prejudice to other reporting obligations).

Exemptions

Article 9 is amended to remove the outdated reference to the exemption for regular services crossing the Strait of Messina. In light of the introduction of electronic transmission of data and given the proposed flexibility to transmit the number of persons on board, Article 9 is amended to remove the possibility to exempt operators from transmitting the number of persons on board to the competent authorities.

Article 9 is also amended to ensure that the exemption criteria reflect the proximity of search and rescue facilities which are no longer included in the new definition of protected sea areas. Finally, Article 9 is amended to simplify the notification of exemptions via a database to be established and maintained for this purpose and to align the procedures for objecting the exemptions within this Directive and with Directive 2009/45/EC.

Member States

Article 10 is amended to align the responsibility of Member States with the proposed means of data transmission and to reflect EU law on protection of personal data by specifying the conditions for processing the data by Member States, access rights and data retention periods.

Ancillary provisions

Article 11 is amended to remove the requirements on company registration systems that become redundant with the proposal. The corresponding paragraph 1 of Article 12 is also removed.

Committee procedure and amendment procedure

Articles 12 and 13 have been brought in line with Treaty on the Functioning of the European Union. Article 12a has been added for the same reason (exercise of delegation power).

Evaluation provisions

Article 14a has been added to specify the evaluation provisions.

Amendment to Annex of Directive 2010/65/EU

The proposal includes an ancillary amendment to the Annex of Directive 2010/65/EU, part A, determined by the changes brought to Directive 98/41/EC.

Proposal for a

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amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and amending Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹³,

Having regard to the opinion of the Committee of the Regions¹⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Accurate and timely information on the numbers of persons on board a ship or on their identity is essential for the preparation and effectiveness of search and rescue operations. In the event of an accident at sea, full and complete cooperation between the competent national authorities of the State or states involved, the ship operator and their agents can contribute significantly to the effectiveness of operations by the competent authorities. Certain aspects of that cooperation are regulated by Council Directive 98/41/EC¹⁵.
- (2) In view of the Regulatory Fitness Programme (REFIT) fitness check¹⁶ results and the implementation experience that has shown that the information on persons on board is not always readily available to the competent authorities, the current requirements of Directive 98/41/EC should be brought in line with the requirements to report data electronically, making them more efficient and less burdensome. Digitalisation will also allow to accelerate the utilisation of information concerning significant number of passengers in the event of an emergency or in the aftermath of an accident.
- (3) Over the past 17 years, key technological progress has been made in the means of communicating and storing data on ship movements allowing the use of automatic identification systems (AIS) on board of ships for enhanced ship monitoring. As a

¹³ OJ C , , p. .

¹⁴ OJ C , , p. .

¹⁵ 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).

¹⁶ COM(2015)508.

result, the related costs of equipment to carry out these functions have been significantly reduced. A number of mandatory ship reporting systems have been set up along Europe's coasts, in accordance with the relevant rules adopted by the International Maritime Organisation (IMO). Union and national law ensure that ships comply with the reporting requirements in force under those systems.

- (4) The collection, transmission and sharing of ship-related data has been enabled, simplified and harmonised by the National Single Window referred to in Directive 2010/65/EU of the European Parliament and of the Council¹⁷ and SafeSeaNet referred to in Directive 2002/59/EC of the European Parliament and of the Council¹⁸. The information on the persons on board required by Directive 98/41/EC should therefore be recorded in the National Single Window that in the event of an emergency or accident allows the data to be readily available to the competent authority.
- (5) In view of ensuring compliance with the principle of proportionality, smaller operators that do not yet use the National Single Window and that operate mainly on very short domestic voyages below 20 nautical miles (i.e. have the obligation to record the number of persons on board only), should have a choice as regards the means of making such number available either via the National Single Window or the AIS.
- (6) To reduce the anxiety of relatives in case of an accident and unnecessary delays in the consular assistance and other services, the communicated data should include information on nationality of persons on board. The list of required data entries for voyages beyond 20 nautical miles should be simplified, clarified and aligned as far as possible with reporting requirements into the National Single Window.
- (7) Taking into account the availability of electronic means of data recording and the fact that personal data should in any event be collected before the ship's departure, the 30 minutes delay currently provided for by Directive 98/41/EC should be considered as a maximum and used in exceptional cases only.
- (8) To increase legal clarity and consistency with related Union legislation and Directive 2009/45/EC of the European Parliament and of the Council¹⁹ in particular, a number of outdated, ambiguous and confusing references should be updated or deleted. The notion of 'sea-going' passenger ship should be replaced by 'passenger ship' and the notion of 'protected sea area' should be replaced by clearly defined sea areas, listed by Member States in accordance with Directive 2009/45/EC. The definition of 'passenger registrar' should be amended to reflect the new duties that no longer include keeping the information. The corresponding requirements for company passenger registration systems should be deleted.
- (9) Member States should remain responsible for ensuring compliance with the data registration requirements under Directive 98/41/EC, namely as regards the accuracy and timely registration of the data. In this regard, verification should be carried out similarly to random checks currently provided for company registration systems.

¹⁷ Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).

¹⁸ 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).

¹⁹ Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (OJ L 163, 25.6.2009, p. 1).

- (10) In as much as measures entail the processing of personal data, those shall be carried out in accordance with Union law on the protection of personal data²⁰. In particular, personal data collected for the purposes of Directive 98/41/EC should not be processed and used for any other purpose and should not be retained longer than necessary for the purposes of Directive 98/41/EC as specified therein.
- (11) In view of the principle of proportionality and given that it is in the passenger's best interest to provide genuine information the current means of personal data collection on a basis of self-declaration of passengers is sufficient for the purposes of Directive 98/41/EC. At the same time, electronic means of data registration and verification should ensure that unique information is registered for every person on board.
- (12) To increase transparency and to facilitate the notification by Member States of exemptions and requests for derogation, a database should be established and maintained for this purpose by the Commission. It should include the notified measures in their draft and adopted form.
- (13) In view of the changes brought about by the Treaty on the Functioning of the European Union, the powers conferred on the Commission to implement Directive 98/41/EC should be updated correspondingly. Implementing acts should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²¹.
- (14) In order to take account of developments at international level and to increase transparency, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of excluding amendments to the international instruments from the scope of this Directive if necessary and establishing conditions of access for the database kept by the Commission to host notifications by Member States of exemptions and requests for derogation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (15) In view of the full monitoring cycle of European Maritime Safety Agency visits, the Commission should evaluate the implementation of Directive 98/41/EC no later than [seven years after the date referred to in the second subparagraph of Article 3(1)] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all information necessary for this evaluation.

²⁰ In particular Regulation (EU) No XXX/2016 of XXX (number and date to be added after formal adoption) of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (reference to OJ to be added after formal adoption) and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

²¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(16) To reflect the changes brought to Directive 98/41/EC, information on persons on board should be included in the list of reporting formalities referred to in Part A of the Annex of Directive 2010/65/EU.

(17) Directives 98/41/EC and 2010/65/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/41/EC

Directive 98/41/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) the second indent is replaced by the following:

"– 'passenger ship' shall mean a ship or a high-speed craft which carries more than 12 passengers,";

(b) the sixth indent is replaced by the following:

"– 'passenger registrar' shall mean the responsible person designated by a company to fulfil the ISM Code obligations or a person designated by a company as responsible for the transmission of information on persons who have embarked on a company passenger ship,";

(c) the ninth indent is replaced by the following:

"– 'protected sea area' shall mean a sea area in which ships of Class D may operate, listed pursuant to Article 4(2) of Directive 2009/45/EC,";

(d) in the tenth indent, the introductory phrase is replaced by the following:

"– 'regular service' shall mean a series of ship 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:";

(e) the eleventh subparagraph is replaced by the following:

"– 'third country' shall mean any country which is not a Member State,";

(f) the following twelfth indent is added:

"– 'port area' shall mean an area defined in point (r) of Article 2 of Directive 2009/45/EC,";

(g) the following thirteenth indent is added:

"– 'pleasure yacht/craft' shall mean a vessel carrying no cargo and not more than 12 passengers not engaged in trade, regardless of the means of propulsion.";

(2) Article 3 is amended as follows:

(a) the first indent is replaced by the following:

"– ships of war and troop ships,";

(b) the second indent is replaced by the following:

"– pleasure yachts and craft,";

(c) the following third indent is added:

"– passenger ships exclusively engaged in port areas.";

(3) in Article 4, paragraph 2 is replaced by the following:

"2. Before the passenger ship departs the number of persons on board shall be communicated to the master of the passenger ship and recorded in the single window established pursuant to Article 5 of Directive 2010/65/EU of the European Parliament and of the Council* or made available to the designated authority by means of Automatic Identification System.

* Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC (OJ L 283, 29.10.2010, p. 1).";

(4) Article 5 is replaced by the following:

"Article 5

1. The following information shall be recorded regarding every passenger ship that departs from a port located in a Member State to undertake a voyage where the distance sailed from the point of departure to the next port of call exceeds 20 miles:

- the family names of the persons on board,
- their forenames,
- their gender,
- their nationality,
- their year of birth,
- when volunteered by a passenger, information concerning the need for special care or assistance in emergency situations.

2. That information shall be collected before departure and recorded in the single window established pursuant to Article 5 of Directive 2010/65/EU upon the passenger ship's departure but in no case later than thirty minutes after its departure.

3. Personal data collected for the purposes of this Directive should not be processed and used for any other purpose.";

(5) in Article 6, paragraph 2 is replaced by the following:

"2. Each Member State shall, as regards every passenger ship that flies the flag of a third country and departs from a port located outwith the Union and is bound for a port located in that Member State, require the company to ensure that the information specified in Articles 4(1) and 5(1) is provided as laid down in Articles 4(2) and 5(2).";

(6) Article 8 is replaced by the following:

"Article 8

Each company assuming responsibility for operating a passenger ship shall, where required under Articles 4 and 5 of this Directive, appoint a passenger registrar responsible for recording the information referred to in those provisions in the single window established pursuant to Article 5 of Directive 2010/65/EU or making it available by means of Automatic Identification System.

Personal data collected in accordance with Article 5 shall not be kept by the company longer than necessary for the purposes of this Directive namely until the moment the data is recorded in the single window established pursuant to Article 5 of Directive 2010/65/EU. Without prejudice to other reporting obligations, once the information is no longer needed for this purpose, it shall be destroyed.

Each company shall ensure that information concerning passengers who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.";

(7) Article 9 is amended as follows:

(a) paragraph 2 is amended as follows:

- points (a) and (b) are deleted;
- point (c) is replaced by the following:

"(c) A Member State may exempt passenger ships sailing, exclusively in protected sea areas, in which the proximity of search and rescue facilities is ensured, between two ports or from and to the same port without intermediate calls from the obligations laid down in Article 5.";

(b) in paragraph 3, points (a) and (b) are replaced by the following:

"(a) the Member State shall without delay notify the Commission of its decision to grant an exemption from the obligations laid down in Article 5 giving substantive reasons therefor. This notification shall be carried out by means of a database established and maintained by the Commission for such purpose. The Commission is empowered to adopt delegated acts in accordance with Article 12a concerning the conditions of access to this database.

(b) if within six months of such notification the Commission considers that that decision is not justified or could have adverse effects on competition, it may, by means of an implementing act, require the Member State to amend or withdraw its decision. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2).";

(c) in paragraph 4, the third subparagraph is replaced by the following:

"The request shall be submitted to the Commission by means of a database referred to in paragraph 3. If within six months of such request the Commission considers that derogation is not justified or could have adverse effects on competition, it may, by means of an implementing act, require the Member State to amend or not to adopt the proposed decision. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2).";

- (8) Article 10 is replaced by the following:

"Article 10

Member States shall verify the accuracy and timeliness of data registration required by this Directive.

Each Member State shall designate the authority that will have access to the information required under this Directive. Member States shall ensure that in the event of an emergency or in the aftermath of an accident, such designated authority has immediate access to the information required under this Directive.

Personal data collected in accordance with Article 5 shall not be kept by Member States longer than necessary for the purposes of this Directive, that is:

- (a) until the moment the ship's voyage in question has been safely completed; or
- (b) in the event of emergency or in the aftermath of an accident, until the possible investigation or judiciary proceedings have been completed.

Without prejudice to other reporting obligations, once the information is no longer needed for these purposes, it shall be destroyed.";

- (9) Article 11 is replaced by the following:

"Article 11

1. For the purposes of this Directive the required data shall be collected and recorded in such a way that no undue delay is caused for passengers embarking and/or disembarking the vessel.
2. A multiplicity of data collection on the same or similar routes shall be avoided.";

- (10) Article 12 is replaced by the following:

"Article 12

The Commission is empowered to adopt delegated acts in accordance with Article 12a, amending this Directive in order to exclude from its scope any amendment to the international instruments referred to in Article 2 only if, on the basis of an evaluation by the Commission, there is a manifest risk that the international amendment will lower the standard of maritime safety, established by Union maritime legislation, or be incompatible with the latter.";

- (11) the following Article 12a is inserted:

"Article 12a

1. The power to adopt delegated acts referred to in Articles 9 and 12 is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 9 and 12 shall be conferred on the Commission for an indeterminate period of time from [the date of entry into force].

3. The delegation of power referred to in Articles 9 and 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 9 and 12 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

7. A delegated act excluding from the scope of this Directive any amendment to the international instruments in accordance with Article 12 shall be adopted at least three months before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment. In the period preceding the entry into force of such delegated act, Member States shall refrain from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.";

(12) Article 13 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council* shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).";

(b) paragraph 3 is deleted;

(13) the following Article 14a is inserted:

"Article 14a

The Commission shall evaluate the implementation of this Directive and submit the results of the evaluation to the European Parliament and the Council no later than [seven years after the date referred to in the second subparagraph of Article 3(1)].".

Article 2
Amendments to the Annex to Directive 2010/65/EU

In Part A of the Annex to Directive 2010/65/EU, the following point (7) is added:

"7. Information on persons on board

Articles 4(2) and 5(2) of 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)."

Article 3
Transposition

1. Member States shall adopt and publish, by [12 months after the entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [12 months after the entry into force].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President