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## REPORT

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From: Presidency

To: Permanent Representatives Committee (Part 1)/Council

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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 1<sup>st</sup> December 2016***

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

– Progress report

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## CONTEXT AND CONTENT OF THE PROPOSAL

1. On 7 June 2016, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council.
2. The proposal forms part of a broader review of the EU passenger ship safety legislation, in line with a "fitness check" carried out by the Commission.<sup>1</sup>

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<sup>1</sup> "REFIT – Adjusting Course: EU Passenger Ship Safety Legislation Fitness Check", doc. 13230/15 + ADD 1 and 2.

3. The Commission proposes to amend Council Directive 98/41/EC<sup>2</sup> in order 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.
4. The objective of Directive 98/41/EC is to avoid overcrowding on board passenger ships, to facilitate search and rescue operations and to allow for immediate follow-up. However, recent incidents, in particular the fire on board the ferry "Norman Atlantic" in December 2014, have pointed to a need to review and modernise the legislation on the registration of persons on board passenger ships.
5. The main change compared to the current Directive is digitalisation, i.e. that instead of the data being kept by the ship company, it would be transmitted to the maritime National Single Windows established in accordance with Directive 2010/65/EU of the European Parliament and of the Council<sup>3</sup>.
6. However, to lessen the burden for companies during short voyages, data could, as an alternative, be made available to the designated authority through the ship's Automatic Identification System (AIS).
7. For longer voyages, the relevant information (names, gender, nationality, year of birth and, if volunteered by the passenger, special needs of care or assistance) should be recorded in the single window upon the ship's departure but not later than thirty minutes after its departure.
8. According to the Commission, this would, both for shorter and longer voyages:
  - allow the local search and rescue centres to access information on persons on board immediately in case of emergency, regardless of the availability of a contact person in the company;

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<sup>2</sup> 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).

<sup>3</sup> 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).

- remove the coexistence of similar reporting requirements spread across several pieces of legislation;
  - eliminate a double reporting requirement for certain operators.
9. The reporting of nationality, which is a novelty, would be based on self-declaration by the passenger and not used for other purposes than identification of the person (unless also required by other legislation, for example, for border control purposes).
  10. The proposal also aims at clarifying the retention period of personal data to reflect EU law on protection of personal data.
  11. In addition, the scope is clarified and aligned with other EU legislation (through definitions of sea areas and port areas).
  12. Finally, the proposal aligns Directive 98/41/EC with the provisions of the Treaty on the Functioning of the EU with regard to the power to adopt delegated and implementing acts conferred on the Commission.

## **WORK WITHIN THE COUNCIL**

13. The Commission made an oral presentation of the review of the passenger ship safety legislation to the Transport Council on 7 June 2016.
14. After a first presentation of the proposal by the Commission to the Shipping Working Party in July 2016, the examination of the proposal started in October 2016.
15. On 3 November 2016, the Shipping Working Party completed the first article-by-article examination of the proposal.
16. It should be noted that the proposal was not accompanied by an impact assessment. However, the Commission's REFIT report was presented and discussed in the Shipping Working Party in October 2015. Furthermore, the Commission proposal was accompanied by an implementation plan and an overview of the simplification proposals<sup>4</sup>.

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<sup>4</sup> Doc. 9964/16 ADD 1 and 2.

## **WORK WITHIN THE EUROPEAN PARLIAMENT**

17. The European Parliament Committee for Transport and Tourism (TRAN) appointed Ms Izaskun Bilbao Barandica (ALDE-Spain) as rapporteur on 1 August 2016.

## **MEMBER STATES' VIEWS ON THE PROPOSAL**

Based on the views expressed in the Shipping Working Party:

18. In general, Member States are positive to the main objectives of the proposal – modernisation and simplification – and welcome them.
19. Concerning the use of the National Single Window, several delegations have expressed concerns, in particular with regard to the state of play of its implementation. It was pointed out that the National Single Windows have only recently become operational, and they do not necessarily have all the required functionalities. In general, concerns have been expressed that the proposal at this stage might lead to additional administrative burdens. Against this background, some delegations suggested to move forward slowly and possibly wait for the revision of Directive 2010/65/EU before dealing with the proposal. However, other delegations are of the view that work should continue.
20. Several delegations also criticise the use of AIS for transmission, e.g. because the appropriate authorities or services (such as search and rescue services) might currently not have access to the system. Furthermore, it has been pointed out that the use of AIS as a means of communication is limited in those Member States that decided to exempt ships under 300 gross tonnes from the obligation to have it. Therefore, some delegations suggest that a third, shore-based option should remain available, in particular for shorter voyages and/or small ships.

21. As for the time-line of 30 minutes to record lists of persons on board, some delegations considered that this delay could be shortened. Some delegations also requested to further harmonise the data entry with the existing reporting requirements (e.g. the FAL forms<sup>5</sup> referred to in Directive 2010/65/EU) and to record 'date of birth' instead of 'year of birth'.
22. A number of delegations have expressed concerns with regard to the rules on data protection and privacy, such as the use for other purposes than safety purposes (not allowed unless specifically provided for in the relevant legislation), the retention period (considered too short by some) and the possibility to verify the accuracy of the information (which the Member States' designated authorities would be obliged to do). In this context it should be noted that the European Data Protection Supervisor, who is responsible for monitoring the application of data protection rules by the EU institutions, has not issued its formal opinion yet.
23. Some delegations would like to clarify that the provisions are not applicable to inland waterway vessels.
24. Furthermore, the need for land-locked countries to transpose the Directive should be reviewed.
25. Finally, the transposition period (12 months) is generally considered too short; several delegations asked for 24 or 36 months.

## CONCLUSION

26. The Permanent Representatives Committee/Council are invited to take note of the progress made on the examination of the proposed Directive.

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<sup>5</sup> The FAL forms are established by the Convention on Facilitation of International Maritime Traffic, 1965 ("FAL Convention").