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## REPORT

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9720/17 MAR 112 CODEC 932
No. Cion doc.:	9964/16 MAR 161 CODEC 847
Subject:	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 – Analysis of the final compromise text with a view to agreement

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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 main objective of Directive 98/41/EC is to facilitate search and rescue operations and to allow for immediate follow-up after an accident.

## STATE OF PLAY

5. The Council reached a general approach on the proposal on 21 March 2017.
6. The European Parliament Committee on Transport and Tourism (TRAN) appointed Ms Izaskun Bilbao Barandica (ALDE-Spain) as rapporteur on 1 August 2016. The TRAN Committee adopted its report on the proposal (with 29 amendments) on 11 April 2017.
7. On 11 May 2017, a first informal trilogue took place, followed by a technical meeting on 1 June.
8. The second trilogue took place on 14 June 2017 in Strasbourg.
9. At that trilogue, an agreement *ad referendum* was reached, the main elements of which are described below.
10. Changes compared to the general approach are marked in **bold** (new text) and ~~striketrough~~ (deleted text).

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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).

## THE FINAL COMPROMISE TEXT

11. As an initial remark, the Presidency would like to stress the fact that the European Parliament is willing to accept a very large part of the Council general approach. In particular, the Parliament is willing to accept the Council definition of "designated authority" (Article 2 seventh indent), the principle of technological neutrality when it comes to reporting in the single window ("by appropriate technical means") and the flexibility for Member States to report to the designated authority through the Automatic Identification System (AIS) (Article 4(2)). Finally, the possibility to exempt regular services of less than one hour (Article 9(2)(b)) remains as in the general approach.
12. The agreed provisions on data protection (recitals 6, 10 and 10a; Articles 5(3), 8(2), 10(3), 10(4) and 11a) are based on a proposal made jointly by the legal services of the three institutions.
13. The issue of implementing versus delegated acts for the conditions of access to the exemption database (Article 9(3)(a)) was solved by indicating already in the Directive that the Commission and Member States shall have access to that database. This means that there is no need for implementing or delegated acts concerning the conditions of access. As for delegated acts amending the Directive in order not to apply an amendment to international instruments under certain conditions (Article 12), the Parliament could accept the Council general approach.
14. The Parliament, supported by the Commission, questioned the Council reference to "sea-going" passenger ships and to inland waterways in Article 3 as well as the definition of inland waterways in Article 2 thirteenth indent. The compromise agreed, after a long discussion, is to delete the word "sea-going", to delete the definition of inland waterways, but to keep the reference to inland waterways in Article 3. In the Presidency's view, it is crucial that the reference to inland waterways in the exceptions from the scope remain. The compromise proposed would ensure this.
15. The Parliament could agree to moving the transposition derogation for landlocked countries (see Article 3(2) and recital 16a) to the scope, a possible solution indicated by the Presidency when the mandate was discussed.

16. The Parliament insisted on its amendment concerning the possibility for the passenger to leave an emergency contact number as part of the information to be recorded for voyages exceeding 20 miles. However, it could eventually accept a solution where this becomes an option, not an obligation, and is left to the discretion of the individual Member States ("if the Member State so chooses").
17. Another important issue for the Parliament was information to passengers about on-board safety measures and on action to be taken in the event of an emergency (recital 7a). The compromise proposed is a recital which in general language stresses the importance of clear instructions to persons on board in accordance with international requirements. It is not specified how such clear instructions be given; it could be for example through oral announcements, signage or audio-visual means. According to the Presidency, this wide range of choice and the reference to established international rules mean that no additional administrative burdens are imposed on operators.
18. Concerning the time given to operators to collect and report personal data (Article 5(2) and recital 7), it should be recalled that the Parliament proposed to shorten this to 10 minutes after departure, while the Council remained with the 30 minutes proposed by the Commission. As part of a global solution concerning all deadlines and outstanding issues, the Presidency agreed *ad referendum* to a deadline of 15 minutes. According to the Presidency, this is not unreasonable given the experience of incidents in the past and it is in line with the position expressed by some Member States during the negotiation of the general approach.
19. Another part of the global solution mentioned above is the transitional period (Article 5(2a)). Here the positions of the Parliament and the Council is far apart: the Parliament has proposed 2 years, the Council 10 years. The compromise proposed by the Presidency is 6 years, which would mean that the two institutions meet halfway.
20. The Presidency proposes the same solution for the transposition deadline. With 12 months proposed by the Parliament and 36 months by the Council, 24 months seem an acceptable outcome.

21. Finally, the most difficult issue was the exemption proposed by the Council for voyages from and to Heligoland and Bornholm (Article 9(2)(d)). The Parliament was not convinced by any of the arguments given by the Presidency. After extended discussions, the Parliament stated that it could reluctantly accept the following compromise solution:

- Operators on the routes from and to the two islands concerned would be exempted from the obligation to collect personal data before departure and to report it upon the ship's departure or 15 minutes thereafter. Instead they would be given additional time, one hour after departure, to collect and report the data. There is no end date for this exemption. In the Presidency's view, this addresses the operational difficulties which have been pointed out by Germany, Denmark and Sweden, namely that passengers on these routes have a tendency to book tickets and/or board the ship at the very last minute before departure.
- Furthermore, it is clarified that operators on these routes may continue to communicate the data collected to the company's passenger registrar or to the shore-based company system, instead of reporting it in the single window, during a transitional period of 6 years.

22. The Presidency considers that the agreement reached *ad referendum* with the European Parliament is very balanced and takes into account the concerns raised by Member States throughout the negotiations.

## CONCLUSION

23. In the light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the Annex with a view to reaching an agreement at first reading with the European Parliament;
- allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Directive in the same form as set out in the Annex to this report, the Council would adopt the Directive in the form of the Commission proposal as thus amended by the Parliament.

2016/0171 (COD)

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**

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 Committee<sup>1</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C 34, 2.2.2017, p. 172.

- (1) Accurate and timely information on the numbers or identity of persons on board a ship 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/EC<sup>2</sup>.
- (2) The results of the Regulatory Fitness Programme (REFIT) fitness check<sup>3</sup> and experience gained in implementing Directive 98/41/EC have shown that information on persons on board is not always readily available to the competent authorities. Consequently, the current requirements of Directive 98/41/EC should be brought in line with the requirements to report data electronically, making them more efficient. Digitalisation will also allow to facilitate access to information concerning significant number of passengers in the event of an emergency or in the aftermath of an accident at sea.
- (3) Over the past 17 years, significant technological progress has been made in the means of communication and the storage of data on ship movements. A number of mandatory ship reporting systems have been set up along Europe's coastlines, in accordance with the relevant rules adopted by the International Maritime Organization (IMO). Union and national law ensure that ships comply with the reporting requirements in force under those systems.  
**Progress should now be made as regards technological innovation, building on the results achieved thus far, including at international level, and ensuring that technological neutrality is always maintained.**

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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> COM(2015)508.

- (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 Council<sup>4</sup> and the Union Maritime Information and Exchange System (SafeSeaNet) referred to in Directive 2002/59/EC of the European Parliament and of the Council<sup>5</sup>. The information on the persons on board required by Directive 98/41/EC should therefore be reported in the National Single Window which allows the data to be readily available to the competent authority in the event of an emergency or accident. The number of persons on board should be reported in the National Single Window by appropriate technical means left to the discretion of Member States or, as an alternative, to the designated authority by means of the Automatic Identification System.
- (4a) For the facilitation of provision and exchange of information reported under this Directive and in order to reduce the administrative burdens, Member States should use the harmonised reporting formalities established by Directive 2010/65/EU. In case of an accident affecting more than one Member State, Member States should make this information available to other Member States via the SafeSeaNet system.
- (4b) To provide for a sufficient period for Member States to add new functionalities to the national single windows, it is appropriate to foresee a transitional period during which Member States have the possibility to maintain the current system for registering persons on board passenger ships.
- (4c) Progress made in developing national single windows should serve as a basis for moving towards a European single window environment in the future.**

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<sup>4</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).

<sup>5</sup> 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).

- (5) Member States should encourage operators, and in particular smaller operators, to use the National Single Window. However, in order to ensure compliance with the principle of proportionality, Member States should have the possibility to exempt, under specific conditions, smaller operators who do not yet use the National Single Window and who operate mainly on short domestic voyages of less than 60 minutes from the obligation to report the number in the National Single Window.
- (5a) Due to the specific geographical location the nature of the transport connections between the mainland and the islands of Heligoland and Bornholm, Germany, Denmark and Sweden should **be given additional time to collect** the list of persons on board **and, for a fixed transitional period, communicate this information pursuant to the current system.**
- (5b) Member States should be allowed to maintain existing possibilities to lower the 20 mile threshold for recording and reporting the list of persons on board. This could include voyages where passenger ships carrying a high number of passengers make successive calls between ports at a distance of less than 20 miles during the course of a single longer voyage. In such cases, Member States should be allowed to lower the 20 mile threshold so as to make it possible to record the information required by this Directive for passengers on board having embarked in the first or intermediate ports.
- (6) To **provide relatives with timely and reliable information** in the case of an accident, **to reduce** unnecessary delays in the consular assistance and other services, **and to facilitate identification procedures**, the data communicated should include information on the nationality of persons on board. The list of required data entries for voyages beyond 20 miles should be simplified, clarified and aligned as far as possible with reporting requirements for 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 **reduced to 15 minutes.**
- (7a) **It is important that clear instructions to be followed in the event of an emergency be provided for every person on board, in accordance with international requirements.**

- (8) To increase legal clarity and consistency with related Union legislation and Directive 2009/45/EC of the European Parliament and of the Council<sup>6</sup> in particular, a number of outdated, ambiguous and confusing references should be updated or deleted. The definition of 'passenger ship' should be aligned to other Union legislation, while maintaining the scope of this Directive. The definition of 'protected sea area' should be deleted and the concept should be aligned with Directive 2009/45/EC for the purposes of the exemptions under this Directive, while ensuring the proximity of search and rescue facilities. The definition of 'passenger registrar' should be amended to reflect the new duties that no longer include the keeping of the information. The definition of 'designated authority' should encompass competent authorities having direct or indirect access to the information required by this Directive. The corresponding requirements for company passenger registration systems should be deleted.
- (8a) This Directive should not apply to pleasure yachts or pleasure craft. In particular, this Directive should not apply to pleasure yachts or pleasure craft when they are bareboat chartered and not subsequently engaged in trade for the purposes of carrying passengers.
- (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. To ensure consistency of information, random checks could be carried out.

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<sup>6</sup> 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 so far as measures **provided for in Directive 98/41/EC and Directive 2010/65/EC** entail the processing of personal data, that processing shall be carried out in accordance with Union law on the protection of personal data, **in particular Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>7</sup>, and Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>8</sup>**. In particular **and without prejudice to other legal obligations in compliance with data protection law**, personal data collected **in accordance with** Directive 98/41/EC should not be processed **or** used for any other purpose and should not be retained longer than necessary for the purposes of Directive 98/41/EC. **Personal data should therefore be erased automatically and without undue delay once a ship's voyage has been safely completed or, as applicable, when an investigation or a judicial proceeding taking place during the aftermath of an accident or emergency has been concluded.**
- (10a) **Taking into account the state of the art and the cost of implementation, each company should implement appropriate technical and organisational measures in order to protect personal data processed pursuant to this Directive against accidental or unlawful destruction or accidental loss, alteration, and unauthorised disclosure or access, in line with Union and national legislation on data protection.**
- (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.

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<sup>7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>8</sup> 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).

(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 that purpose by the Commission. It should include the notified measures in their draft and adopted form.

**The adopted measures should be made publicly accessible.**

**(12a) Data relating to the notification of exemptions and requests for derogation by the Member States should be harmonised and coordinated as necessary in order to ensure that the use of such data is as effective as possible.**

(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 Council<sup>9</sup>.

(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 not applying, for the purposes of this Directive, amendments to the international instruments if necessary. 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.

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<sup>9</sup> 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).

- (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 that evaluation.
- (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.
- (16a) **In order not to impose a disproportionate administrative burden on landlocked Member States with no passenger ships flying their flag that fall in the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. This means that as long as this condition is fulfilled, they are not obliged to transpose this Directive.**
- (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, where applicable, or a person designated by a company as responsible for the transmission of information on persons who have embarked on a company passenger ship,";

(ba) the seventh indent is replaced by the following:

"– 'designated authority' shall mean the competent authority of the Member State responsible for search and rescue or concerned with the aftermath of an accident having access to the information required under this Directive,";

(c) the ninth indent is deleted;

(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 indent 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,";

~~(fa) the following thirteenth indent is added:~~

~~"— 'inland waterway' shall mean inland waterways as referred to in Article 4 of Directive 2016/1629/EU of the European Parliament and of the Council\*,~~

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~~\*— Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118).";~~

(g) the following **thirteenth** indent is added:

"— 'pleasure yacht or pleasure craft' shall mean a vessel not engaged in trade, regardless of the means of propulsion.";

(2) Article 3 is replaced by the following:

"1. This Directive shall apply to ~~sea-going~~ passenger ships with the exception of:

- ships of war and troop ships,
- pleasure yachts and pleasure craft,
- passenger ships exclusively engaged in port areas or inland waterways.

2. **Member States which do not have seaports and which have no passenger ships flying their flag that fall within the scope of this Directive may derogate from the provisions of this Directive except for the obligation set out in the following subparagraph.**

**Those Member States which intend to avail themselves of such derogation shall communicate to the Commission at the latest on [date of transposition of this Directive] if the conditions are met and shall inform the Commission annually thereafter of any subsequent change. Such Member States may not allow passenger ships that fall within the scope of this Directive to fly their flag until they have transposed and implemented this Directive.";**

- (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 reported by appropriate technical means in the single window established pursuant to Article 5 of Directive 2010/65/EU of the European Parliament and of the Council\* or, if the Member State so chooses, to the designated authority by means of the Automatic Identification System.

For a transitional period of [6 years after the entry into force of this Directive], Member States may allow for that information to continue to be communicated to the company's passenger registrar or to the shore-based company system that performs the same function, instead of reporting it in the single window or to the designated authority by means of the Automatic Identification System.

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\* 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 date of birth,
  - when volunteered by a passenger, information concerning special care or assistance **that might be needed in an emergency,**
  - **if the Member State so chooses, when volunteered by the passenger, a contact number in case of an emergency.**
2. That information shall be collected before departure and reported 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 **15** minutes after its departure.
- 2a. For a transitional period of [**6** years after the entry into force of this Directive], Member States may allow for that information to continue to be communicated to the company's passenger registrar or to the shore-based company system that performs the same function, instead of reporting it in the single window.

3. Without prejudice to other legal obligations in compliance with **Union and national legislation on** data protection, personal data collected for the purposes of this Directive shall not be processed and used for any other purpose. **Such personal data shall always be handled in accordance with Union law on data protection and privacy and shall be erased automatically and without undue delay once it is no longer needed.**";

(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 outside 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 in accordance with 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 reporting the information referred to in those provisions in the single window established pursuant to Article 5 of Directive 2010/65/EU or to the designated authority by means of the 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 ship's voyage in question has been safely completed and the data is reported in the single window established pursuant to Article 5 of Directive 2010/65/EU. Without prejudice to other **specific** legal obligations **under Union or national law, including for statistical purposes**, once the information is no longer needed for this purpose, it shall be **erased automatically and without undue delay**.

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:

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

"(b) A Member State from a port in which a ship departs may exempt passenger ships, with the exclusion of high-speed craft, operating, exclusively in sea area D listed pursuant to Article 4 of Directive 2009/45/EC, in which the proximity of search and rescue facilities is ensured, regular services of less than one hour between port calls from the obligation to report the number of persons on board in the single window established pursuant to Article 5 of Directive 2010/65/EU.

(c) A Member State may exempt passenger ships sailing, exclusively in sea area D listed pursuant to Article 4 of Directive 2009/45/EC, 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.";

- point (d) is added:

"(d) **By way of derogation from Article 5(2) and without prejudice to the transitional period laid down in Article 5(2a), the following Member States shall have the right to apply the following exemptions:**

- (i) Germany may **extend the periods for the collection and reporting of information referred to in Article 5(1) to one hour after departure in the case of** passenger ships operating from and to the Island of Heligoland, and
- (ii) Denmark and Sweden may **extend the periods for the collection and reporting of information referred to in Article 5(1) to one hour after departure in the case of** passenger ships operating from and to the Island of Bornholm.";

(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 and Member States shall have access to that database. The adopted measures shall be made available by the Commission on a publicly accessible website.** ~~The Commission shall decide, by means of an implementing act, the conditions of access to this database. Those implementing acts shall be adopted in accordance with examination procedure referred to in Article 13(2).~~

(b) if within six months of such notification the Commission considers that the exemption 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 the database referred to in paragraph 3. If within six months of such request the Commission considers that the 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 ensure that companies have a procedure for data registration in place which guarantees that information required by this Directive is reported in an accurate and timely manner.

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, but in any case not longer than 60 days after the ship's departure; 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 **specific** legal obligations **under Union or national law, including for statistical purposes**, once the information is no longer needed for these purposes, it shall be **erased automatically and without undue delay.** ";

- (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.";

**(9a) The following article is inserted:**

**"Article 11a**

- 1. The processing of personal data pursuant to this Directive shall be carried out in accordance with Regulation (EU) 2016/679.**
- 2. The processing of personal data by Union institutions and bodies pursuant to this Directive, such as in the Single Window and the SafeSeaNet, shall be carried out in accordance with Regulation (EC) No 45/2001."**

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

**"Article 12**

- 1. In exceptional circumstances, where duly justified by an appropriate analysis by the Commission and in order to avoid a serious and unacceptable threat to maritime safety or incompatibility with Union maritime legislation, the Commission is empowered to adopt delegated acts in accordance with Article 12a, amending this Directive in order not to apply, for the purposes of this Directive, an amendment to the international instruments referred to in Article 2.**
- 2. A delegated act, amending this Directive in order not to apply, for the purposes of this Directive, any amendment to the international instruments in accordance with **this** Article, 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.";**

(11) the following Article is inserted:

"Article 12a

1. The power to adopt delegated acts referred to in Article 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 Article 12 shall be conferred on the Commission for a period of seven years from [the date of entry into force]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 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 Article 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, amending this Directive in order not to apply, for the purposes 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.";~~<sup>10</sup>

(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.

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\* 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;

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<sup>10</sup> *Moved to Article 12.*

(13) the following Article 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)].

**No later than [three years after the date referred to in the second subparagraph of Article 3(1)], the Commission shall submit to the European Parliament and to the Council an interim report on the implementation of this Directive."**

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 [24 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 [24 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.

~~2a. By way of derogation from paragraph 1, a Member State shall not be obliged to transpose the Directive if there are no maritime ports in its territory and it has no ships or craft flying its flag that fall within the scope of this Directive. Such a Member State may not allow ships or craft that fall within the scope of this Directive to fly its flag until it has transposed and implemented this Directive.~~

~~Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on [OJ: please insert date of transposition of this Directive]. Any subsequent change shall also be communicated to the Commission.~~

#### 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*

*For the Council*

*The President*

*The President*

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