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NOTE

From:	General Secretariat of the Council
To:	Delegations
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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

In view of the Shipping Working Party on 16 January 2017, delegations will find attached a revised Presidency compromise proposal.

Compared to the previous document, changes are indicated in **bold** (new text) and ~~strikethrough~~ (deleted text).

General scrutiny and language reservation: all delegations.

Parliamentary scrutiny reservation: DK and UK.

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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

- (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/EC².
- (2) The results of the Regulatory Fitness Programme (REFIT) fitness check³ 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 and less burdensome. 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. That progress has made it possible to use automatic identification systems (AIS) on board ships for enhanced ship monitoring. As a result, the related costs of the equipment needed to carry out those functions have been significantly reduced. 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.

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 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 Council⁴ and the Union Maritime Information and Exchange System (SafeSeaNet) referred to in Directive 2002/59/EC of the European Parliament and of the Council⁵. The information on the persons on board required by Directive 98/41/EC should therefore be recorded 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.
- (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.
- (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.
- (5) To ensure compliance with the principle of proportionality, smaller operators who do not yet use the National Single Window and who operate mainly on very short domestic voyages of less than 20 miles (i.e. who 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 the case of an accident and to avoid unnecessary delays in the consular assistance and other services, 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.

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).

⁵ 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).

- (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 Council⁶ 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 the keeping of 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 the random checks currently provided for company registration systems.
- (10) In so far as measures entail the processing of personal data, that processing shall be carried out in accordance with Union law on the protection of personal data⁷. In particular, personal data collected for the purposes of 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 as specified therein.

⁶ 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).

⁷ In particular 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) 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).

- (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 that 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 Council⁸.
- (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.

⁸ 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) For a Member State which neither has maritime ports in its territory nor ships or craft flying its flag falling under the scope of this Directive, it would be a disproportionate and unnecessary obligation if that Member State had 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,";

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

"– 'protected sea area' shall mean a sea area D, listed pursuant to Article 4 of Directive 2009/45/EC,"⁹

(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,";

⁹ PL suggests deleting the definition of "protected sea area".

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

(2) Article 3 is ~~amended as follows~~ **replaced by the following**:

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

~~(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 **pleasure craft**,";

~~(c) the following third indent is added:~~

"— passenger ships exclusively engaged in port areas or inland waterways.";

(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~~ **reported** 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 the Automatic Identification System.~~

For a transitional period of [7 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 ~~recording reporting~~ it in the single window ~~or making it available to the designated authority by means of the Automatic Identification System.~~¹⁰

* 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 the¹¹ distance sailed from the point of departure to the next port of call¹² 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 the need for special care or assistance in emergency situations.

¹⁰ PL: reservation on transitional period.

¹¹ DK suggests replacing the end of the sentence with "**where the ship, in the course of its voyage, proceeds more than 20 miles from the nearest land.**".

¹² EL suggests adding "**or, in the case of successive calls at intermediate ports, to the port of final destination**".

2. That information shall be collected before departure and ~~recorded~~ **reported** in the single window established pursuant to Article 5 of Directive 2010/65/EU upon the passenger ship's departure¹³ but in no case later than thirty minutes after its departure **using harmonised reporting formalities for the facilitation of provision and exchange of information.**
- 2a. For a transitional period of [7 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 ~~recording~~ **reporting** it in the single window.
3. **Without prejudice to other legal obligations, personal data collected for the purposes of this Directive shall not be processed and used for any other purpose.**";¹⁴

(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 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 ~~recording~~ **reporting** 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.~~

¹³ PL: reservation on "upon departure".

¹⁴ *To be further analysed against the background of the formal comments of the European Data Protection Supervisor (see doc. 15533/16).*

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 **end of the retention period referred to in the third subparagraph of Article 10** ~~moment the data is recorded in the single window established pursuant to Article 5 of Directive 2010/65/EU~~. Without prejudice to other legal obligations, once the information is no longer needed for this purpose, it shall be destroyed.¹⁵

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

"(b) A Member State from a port in which a ship departs may, during the transitional period, exempt passenger ships operating, exclusively in protected sea areas, regular services of less than one hour between port calls from the obligation to communicate to the company's passenger registrar or to the shore-based company system.

(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.";

¹⁵ *To be further analysed against the background of the formal comments of the European Data Protection Supervisor (see doc. 15533/16).*

(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 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 a 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 **mechanism of** data registration ~~system~~ 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 Directive¹⁶, that is:

- (a) until the moment the ship's voyage in question has been safely completed¹⁷; 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 legal obligations, once the information is no longer needed for these purposes, it shall be destroyed."¹⁸

¹⁶ PL suggests deleting points (a) and (b).

¹⁷ SE suggests adding "as notified by the ship".

¹⁸ *To be further analysed against the background of the formal comments of the European Data Protection Supervisor (see doc. 15533/16).*

(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

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.";

(11) the following Article is inserted:

"Article 12a

1. The power to adopt delegated acts referred to in ~~Articles 9 and~~ **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 ~~Articles 9 and~~ **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 ~~Articles 9 and~~ **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 ~~Articles 9 and~~ **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.";

(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 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 [36 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 [36 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.¹⁹

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*.

¹⁹ PL: reservation on the second sentence.

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
