Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017 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 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

DIRECTIVE (EU) 2017/2109 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 November 2017

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 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[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Accurate and timely information on the number 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 the operations. Certain aspects of that cooperation are regulated by Council Directive 98/41/EC[(3)].

(2) The results of the Regulatory Fitness and Performance Programme (REFIT) fitness check and the experience gained in the course of implementing Directive 98/41/EC have revealed that information on persons on board is not always readily available to the competent authorities when they need it. In order to address this situation, the current requirements of Directive 98/41/EC should be brought in line with the requirements to report data electronically, leading to greater efficiency. Digitalisation will also make it possible to facilitate access to information concerning a significant number of passengers in the event of an emergency or in the aftermath of an accident at sea.

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(3) Over the past 17 years, significant technological progress has been made as regards 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). Both Union law and national law ensure that ships comply with the reporting requirements in force under those systems. It is now necessary to make progress as regards technological innovation, building on the results achieved thus far, including at international level, and ensuring that technological neutrality is always maintained.

(4) The collection, transmission and sharing of ship-related data have 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[(4)] and the Union Maritime Information and Exchange System (SafeSeaNet) referred to in Directive 2002/59/EC of the European Parliament and of the Council[(5)]. The information on the persons on board required by Directive 98/41/EC should therefore be reported in the National Single Window which allows thecompetent authority to readily access the data in the event of an emergency or in the aftermath of an accident at sea. The number of persons on board should be reported in the National Single Window using appropriate technical means, which should be left to the discretion of Member States. Alternatively, it should be reported to the designated authority by means of the Automatic Identification System.

(5) To facilitate the provision and exchange of information reported under this Directive and in order to reduce the administrative burden, Member States should use the harmonised reporting formalities established by Directive 2010/65/EU. In the event of an accident affecting more than one Member State, the Member States should make information available to other Member States via the SafeSeaNet system.

(6) To allow Member States a sufficient period to add new functionalities to the national single windows, it is appropriate to provide for a transitional period during which Member States have the possibility to maintain the current system for registering persons on board passenger ships.

(7) Progress made in developing national single windows should serve as a basis for moving towards a European single window environment in the future.

(8) 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 mainly operate short domestic voyages of less than 60 minutes from the obligation to report in the National Single Window the number of persons on board.

(9) In order to take account of the specific geographical location of the islands of Heligoland and Bornholm and the nature of their transport connections to the mainland, Germany, Denmark and Sweden should be given additional time to collect the list of persons on board and, during a transitional period, to use the current system to communicate this information.

(10) Member States should continue to have the possibility to lower the 20 mile threshold for recording and reporting the list of persons on board. This right includes 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 for the information required by this Directive to be recorded in respect of passengers on board who embarked in the first or intermediate ports.

(11) 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 of over 20 miles should be simplified, clarified and, as far as possible, aligned with reporting requirements for the National Single Window.

(12) Given the improvements in the electronic means of data recording, and taking into account the fact that personal data is collected before the ship's departure, the 30 minutes delay currently provided for by Directive 98/41/EC should be reduced to 15 minutes.

(13) 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.

(14) To increase legal clarity and to enhance consistency with related Union legislation, and in particular Directive 2009/45/EC of the European Parliament and of the Council[(6)], 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, in a way that does not exceed the scope of this Directive. The definition of ‘protected sea area’ should be replaced by a concept which is aligned with Directive 2009/45/EC for the purposes of the exemptions under this Directive, 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 information. The definition of ‘designated authority’ should cover 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.

(15) This Directive should not apply to pleasure yachts or pleasure craft. In particular, it 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.

(16) 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, it should be possible to carry out random checks.

(17) In so far as measures provided for in Directives 98/41/EC and 2010/65/EU entail the processing of personal data, that processing should 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[(7)], and Regulation (EC) No 45/2001 of the European Parliament and of the Council[(8)]. In particular and without prejudice to

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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.

(18) 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.

(19) 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 the basis of self-declaration by 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.

(20) 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.

(21) 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.

(22) In view of the changes brought about by the Treaty on the Functioning of the European Union (TFEU), 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[9].

(23) In order to take account of developments at international level and to increase transparency, the power to adopt acts in accordance with Article 290 (TFEU), 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 of 13 April 2016 on Better Law-Making. 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.

(24) In view of the full monitoring cycle of European Maritime Safety Agency visits, the Commission should evaluate the implementation of Directive 98/41/EC by 22 December 2026 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.

(25) 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 to Directive 2010/65/EU.

(26) In order not to impose a disproportionate administrative burden on landlocked Member States which have no seaports and which have no passenger ships flying their flag that fall within 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.

(27) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered formal comments on 9 December 2016.

(28) 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 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,;

(d) the ninth indent is deleted;

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