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

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 189c of the Treaty[(3)],

(1) Whereas within the framework of the common transport policy further measures must be taken to enhance safety in maritime transport;

(2) Whereas the Community is seriously concerned by shipping accidents involving passenger ships which have resulted in massive loss of life, particularly those involving the *Herald of Free Enterprise* and the *Estonia*; whereas persons using passenger ships and high-speed passenger craft throughout the Community have the right to expect and to be able to rely on an appropriate level of safety and upon an adequate information system which will facilitate search and rescue and the efficient handling of the aftermath of any accident that might occur;

(3) Whereas it is necessary to ensure that the number of passengers on board a passenger ship does not exceed the number for which the ship and its safety equipment have been certified; whereas companies should be able to inform the search and rescue services of the number of persons involved in an accident;

(4) Whereas information must be compiled on passengers and crew in order to facilitate search and rescue and the efficient handling of the aftermath of an accident, i.e. identifying the persons involved, providing clearer information on related legal issues and contributing to more appropriate medical care for rescued persons; whereas such information would prevent unnecessary anxiety on the part of relatives and other persons concerned regarding persons on board passenger ships involved in marine accidents in waters for which Member States bear responsibility under the 1979 International Convention on Maritime Search and Rescue (SAR);

(5) Whereas passengers should therefore be counted and registered before any ship departs;

(6) Whereas Chapter III of the International Convention on the Safety of Life at Sea (the SOLAS Convention) provides for the counting and registration of all persons on board

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all passenger ships sailing on international voyages, from 1 July 1997 and 1 January 1999 respectively, while permitting Administrations to exempt passenger ships sailing in sheltered waters from those requirements and from the requirement to register if the scheduled voyages of such ships render it impracticable for them to prepare such records; whereas that Chapter of the SOLAS Convention does not apply to domestic voyages and leaves important points of interpretation to the discretion of individual Member States;

(7) Whereas this Directive is in accordance with the right of Member States to impose on passenger ships sailing to or from their ports certain requirements more stringent than those laid down in the SOLAS Convention;

(8) Whereas in view, in particular, of the internal-market dimension of maritime passenger transport, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community;

(9) Whereas, in view of the principle of proportionality a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of safety standards while leaving each Member State the right to decide which implementation tools best fit its internal system;

(10) Whereas a Member State can ensure compliance with the safety rules applicable on the part of passenger ships flying its flag and the companies that operate them; whereas those rules should not be imposed upon ships operating between ports in third countries; whereas the provisions of the SOLAS Convention apply to those voyages;

(11) Whereas the only way of ensuring the safe and efficient handling of the aftermath of accidents for all passenger ships, irrespective of their flags, operating or wishing to operate from their ports, is for the Member States to require effective compliance with the relevant rules as a condition of operating from their ports; whereas the granting of exemptions from those rules cannot be left solely to the flag State since only the port State is in a position to determine the requirements for the best possible search and rescue operations for passenger ships sailing to and from a port;

(12) Whereas in order to harmonise safety protection and avoid distortions of competition, Member States should not, for reasons other than those mentioned in this Directive, grant exemptions or derogations from the relevant SOLAS provisions on ‘information on passengers’ for voyages starting from or arriving at Community ports;

(13) Whereas for reasons of practicability and to avoid distortion of competition, a uniform approach must be established to determine the voyages for which the registration of all persons on board should be mandatory; whereas the twenty-mile threshold is the result of taking into consideration general principles and specific points of concern endorsed by all Member States;

(14) Whereas, for specific operational reasons, the counting of persons on board passenger ships crossing the Strait of Messina might, for a limited period of time, be done in a simpler way than individual counting; whereas Member States should enjoy the possibility of granting some relaxation from the obligation to communicate to the shore the number of persons in the case of passenger ships operating on regular services of

short duration carried out exclusively in protected sea areas, as defined in this Directive; whereas passenger ships operating exclusively in protected sea areas constitute a more limited risk and should, therefore, enjoy the possibility of exemption; whereas in certain specific circumstances it may be impracticable for shipping companies to register persons on board and therefore a derogation from the obligation to register could be permitted under specific circumstances and well defined conditions;

(15) Whereas the collection and processing of data concerning named individuals must be carried out in accordance with the principles of data protection laid down in Directive 95/46/EC[(4)]; whereas, in particular, individuals should be fully informed at the time of collection of the purposes for which the data are required, and the data should be retained only for a very short period which should not in any case be any longer than necessary for the purposes of this Directive;

(16) Whereas it is necessary that a committee consisting of representatives of the Member States assist the Commission in the effective application of this Directive; whereas the committee set up by Article 12 of Directive 93/75/EEC[(5)] can assume that function;

(17) Whereas certain provisions of this Directive may be adapted by that Committee to take into account future amendments to the SOLAS Convention that have entered into force,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive shall be to enhance the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the Community and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with more effectively.

Article 2

For the purposes of this Directive:

— ‘persons’ shall mean all people on board irrespective of age,

— **[**[F1]‘passenger ship’ shall mean a ship or a high-speed craft which carries more than 12 passengers,**]**

— ‘high-speed craft’ shall mean a high-speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, **[**[F2]in its up-to-date version**]**,

— ‘company’ shall mean the owner of a passenger ship or any other organisation or person such as the manager or the bareboat charterer, who has assumed responsibility for operating the passenger ship from the owner,

— ‘ISM Code’ shall mean the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization (IMO) through Assembly Resolution A.741(18) of 4 November 1993,

— **[**[F1]‘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,**]**

— **[**[F1]‘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,**]**

— ‘a mile’ is 1 852 metres,

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— [F3. . . . .]

— [F1'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:]

(a) according to a published timetable, or

(b) with crossings so regular or frequent that they constitute a recognizable systematic series,

— 'third country' shall mean any country which is not a Member State[F1,]

— [F4'port area' shall mean an area as defined in point (r) of Article 2 of Directive 2009/45/EC,]

— [F4'pleasure yacht or pleasure craft' shall mean a vessel which is not engaged in trade, regardless of its means of propulsion.]

Textual Amendments

F1 Substituted by 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.

F2 Substituted by Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships (Text with EEA relevance).

F3 Deleted by 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.

F4 Inserted by 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.

[F1 *Article 3*

1 This Directive shall apply to passenger ships, with the exception of:

— ships of war and troop ships,

— pleasure yachts and pleasure craft,

— 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 second subparagraph.

Those Member States which intend to avail themselves of such derogation shall communicate to the Commission at the latest on 21 December 2019 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.]

Textual Amendments

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Article 4

1 All persons on board any passenger ship which departs from a port located in a Member State shall be counted before that passenger ship departs.

[F1 2 Before the passenger ship departs, the number of persons on board shall be communicated to the master of the 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(6), or, if the Member State so chooses, communicated to the designated authority by means of the Automatic Identification System.

For a transitional period of 6 years from 20 December 2017, Member States may continue to allow that information to be communicated to the company's passenger registrar or to the shore-based company system that performs the same function, instead of requiring it to be reported in the single window or to the designated authority by means of the Automatic Identification System.**]**

Textual Amendments

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***[**F1 *Article 5*

1 Where a passenger ship departs from a port located in a Member State in order to undertake a voyage of which the distance sailed from the point of departure to the next port of call exceeds 20 miles, the following information shall be recorded:

— the family names of the persons on board, their forenames, their gender, their nationality, their dates 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 The information listed in paragraph 1 shall be collected before the passenger ship's 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.

3 For a transitional period of 6 years from 20 December 2017, Member States may continue to allow that information be communicated to the company's passenger registrar or to