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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)

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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 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

⁽¹⁾ OJ C 31, 31. 1. 1997, p. 5 and OJ C 275, 11. 9. 1997, p. 7.

⁽²⁾ OJ C 206, 7. 7. 1997, p. 111.

⁽³⁾ Opinion of the European Parliament of 29 May 1997 (OJ C 138, 16. 6. 1998, p. 31), Council common position of 11 December 1997 (OJ C 23, 23. 1. 1998, p. 17), and Decision of the European Parliament of 11 March 1998 (OJ C 104, 6. 4. 1998).

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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;

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- (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 ⁽¹⁾; 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 ⁽²⁾ 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,
- ‘passenger ship’ shall mean a sea-going ship or a sea-going high-speed craft which carries more than twelve passengers,
- ‘high-speed craft’ shall mean a high-speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, ►**MI** 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,
- ‘passenger registrar’ shall mean the responsible shore-based person designated by a company to fulfil the ISM Code obligations or a shore-based person designated by a company as responsible for the keeping of information on persons who have embarked on a company passenger ship,
- ‘designated authority’ shall mean the competent authority of the Member State responsible for search and rescue or concerned with the aftermath of an accident,
- ‘a mile’ is 1 852 metres,
- ‘protected sea area’ shall mean a sea area sheltered from open sea effects where a ship is at no time more than six miles from a place of refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured,
- ‘regular service’ shall mean a series of ship crossings operated so as to serve traffic between the same two or more ports, either:
 - (a) according to a published timetable, or

⁽¹⁾ OJ L 281, 23. 11. 1995, p. 31.

⁽²⁾ OJ L 247, 5. 10. 1993, p. 19.

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- (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.

Article 3

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

- ships of war and troop ships, and
- pleasure yachts unless they are or will be crewed and carry more than twelve passengers for commercial purposes.

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.
2. Before the passenger ship departs the number of persons on board shall be communicated to the master of the passenger ship and to the company's passenger registrar or to a shore-based company system that performs the same function.

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 of more than twenty miles from the point of departure:
 - the family names of the persons on board,
 - their forenames or initials,
 - their sex,
 - an indication of the category of age (adult, child or infant) to which each person belongs, or the age, or the year of birth,
 - when volunteered by a passenger, information concerning the need for special care or assistance in emergency situations.
2. That information shall be collected before departure and communicated not later than thirty minutes after the passenger ship's departure to the company's passenger registrar or to a shore-based company system that performs the same function.

Article 6

1. Each Member State shall, as regards every passenger ship that flies its flag and departs from a port located outwith the Community and is bound for a port located within the Community, require the company to ensure that the information specified in Articles 4(1) and 5(1) is provided as laid down in Articles 4(2) and 5(2).
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 Community and is bound for a port located within the Community, require the company to ensure that the information specified in Articles 4(1) and 5(1) is collected and maintained so that it is available to the designated authority when needed for purposes of search and rescue and in the aftermath of an accident.
3. Where under the relevant SOLAS provisions a Member State grants an exemption or derogation relating to the information concerning passengers to a ship flying its flag arriving at a port located within the Community from a port located outwith the Community, it may do so only under the conditions laid down for exemptions or derogations in this Directive.

▼B*Article 7*

Before a passenger ship departs from a port located in a Member State its master shall ensure that the number of persons on board does not exceed the number the passenger ship is permitted to carry.

Article 8

Each company assuming responsibility for operating a passenger ship shall, where required under Articles 4 and 5:

- set up a system for the registration of passenger information. The system shall meet the criteria laid down in Article 11,
- appoint a passenger registrar responsible for the keeping and the transmission of that information should an emergency occur or in the aftermath of an accident.

The company shall ensure that the information required by this Directive is at all times readily available for transmission to the designated authority for search and rescue purposes in the event of an emergency or in the aftermath of an accident.

Personal data collected in accordance with Article 5 shall not be kept longer than necessary for the purposes of this Directive.

The company shall ensure that information concerning persons 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.

Article 9

1. A Member State from a port in which a passenger ship departs may lower the twenty-mile threshold laid down in Article 5.

Any decision lowering that threshold for journeys between two ports in different Member States shall be taken jointly by those two Member States.

2. (a) When implementing Article 4(1) the Italian Republic may, for regular services crossing the Strait of Messina, adopt provisions for counting the maximum number of persons permitted to be carried on board a passenger ship carrying passenger-train carriages and road vehicles on the basis of the maximum number of passengers authorised to be carried by train carriages and all other vehicles on board, if the persons cannot be counted individually for operational reasons. The application of this provision shall be limited to a period of four years. Any extension shall be decided, in accordance with paragraph 3, in the light of the experience gained.
- (b) A Member State from a port in which a ship departs may exempt passenger ships operating, exclusively in protected sea areas, regular services of less than one hour between port calls from the obligation laid down in Article 4(2) to communicate the number of persons on board to the passenger registrar or to a shore-based company system that performs the same function.
- (c) A Member State may exempt passenger ships sailing, exclusively in protected sea areas, between two ports or from and to the same port without intermediate calls from the obligations laid down in Article 5.

3. In the circumstances set out in paragraph 2, the following procedure shall apply:

- (a) the Member State shall without delay inform the Commission of its decision to grant an exemption or a derogation from the relevant provisions of Articles 4 and 5 giving substantive reasons therefor;
- (b) if within six months of such notification the Commission considers that that decision is not justified or could have adverse effects on competition, it may, acting in accordance with the procedure laid down in Article 13, require the Member State to amend or withdraw its decision.

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4. For regular services in an area where the annual probability of the significant wave height's exceeding two metres is less than 10 %, and
- if the voyage does not exceed about thirty miles from the point of departure or
 - where the primary purpose of the service is to provide regular links to outlying communities for customary purposes,

a Member State from a port in which passenger ships sail on domestic voyages or two Member States between ports in which passenger ships sail may request the Commission, if they consider it impracticable for companies to record the information specified in Article 5(1) to derogate, wholly or partly, from this requirement.

To this end, evidence of such impracticability shall be provided. In addition, it shall be demonstrated that in the area where such ships operate, shore-based navigational guidance and reliable weather forecasts are provided and that adequate and sufficient search and rescue facilities are available. Derogations granted under this paragraph may not have any adverse effect on competition.

A decision shall be taken in accordance with the procedure laid down in Article 13.

5. A Member State shall not, under the provisions of this Directive, exempt or grant derogations to any passenger ship sailing from its ports and flying the flag of a third country that is a contracting party to the SOLAS Convention which under the relevant SOLAS provisions does not agree to the application of such exemptions.

Article 10

The registration systems set up in accordance with Article 8 shall be approved by the Member States.

Member States shall at least carry out random checks on the proper functioning of the registration systems set up pursuant to this Directive within their territories.

Each Member State shall designate the authority to which the companies covered by Article 8 shall communicate the information required by this Directive.

Article 11

1. For the purposes of this Directive registration systems shall meet the following functional criteria:

- (i) *readability*:
the required data must be in a format that is easy to read,
- (ii) *availability*:
the required data must be easily available to the designated authorities for which the information contained in the system is relevant,
- (iii) *facilitation*:
the system must be designed in such a way that no undue delay is caused for passengers embarking and/or disembarking the vessel;
- (iv) *security*:
the data must be appropriately protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access.

2. A multiplicity of systems on the same or similar routes is to be avoided.

Article 12

Without prejudice to the procedures for amending the SOLAS Convention, this Directive may be amended in accordance with the procedure laid down in Article 13, in order to ensure the application, for the purposes of this Directive and without broadening its scope, of subsequent amendments to the SOLAS Convention relating to the

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registration systems which have entered into force after the adoption of this Directive.

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The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) ⁽¹⁾.

Article 13

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) created by Article 3 of Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾ shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3. The Committee shall adopt its rules of procedure.

▼B*Article 14*

Member States shall lay down systems of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 15

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1999. They shall forthwith inform the Commission thereof. Article 5 shall be applied no later than 1 January 2000.

2. When the Member States adopt those measures, they shall contain references to this Directive or shall be accompanied by such references on the occasion of their official publication. The methods of making such references shall be laid down by the Member States.

3. The Member States shall immediately communicate to the Commission the texts of all provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 16

This Directive shall enter into force on the twentieth day after its publication.

Article 17

This Directive is addressed to the Member States.

⁽¹⁾ OJ L 324, 29.11.2002, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.