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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)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002	L 324	53	29.11.2002
► <b><u>M2</u></b>	Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008	L 311	1	21.11.2008
► <b><u>M3</u></b>	Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017	L 315	52	30.11.2017

**▼B****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***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,

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

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— ‘high-speed craft’ shall mean a high-speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, ►**M1** 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,

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— ‘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,

— ‘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,

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— ‘a mile’ is 1 852 metres,

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— ‘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:

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- (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,

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- ‘port area’ shall mean an area as defined in point (r) of Article 2 of Directive 2009/45/EC,
- ‘pleasure yacht or pleasure craft’ shall mean a vessel which is not engaged in trade, regardless of its means of propulsion.

*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.

**▼B***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.

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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 <sup>(1)</sup>, 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.

<sup>(1)</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).

**▼ M3***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 the shore-based company system that performs the same function, instead of requiring it to be reported in the single window.

4. Without prejudice to other legal obligations that comply 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.

**▼ B***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).

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2. Each Member State shall, as regards every passenger ship that flies the flag of a third country, 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).

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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.

**▼ M3***Article 8*

1. 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.

2. Personal data collected in accordance with Article 5 of this Directive shall be kept by the company no longer than is necessary for the purposes of this Directive, and in any event only until the moment the ship's voyage in question has been safely completed and the data has been 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.

3. 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.

**▼ B***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.

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2. A Member State from whose port a passenger ship departs may exempt it 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, provided that the ship concerned is not a high speed craft, it operates regular services of less than one hour between port calls exclusively in sea area D established pursuant to Article 4 of Directive 2009/45/EC and the proximity of search and rescue facilities is ensured in that sea area.

A Member State may exempt passenger ships sailing between two ports or from and to the same port without intermediate calls from the obligations laid down in Article 5 of this Directive, provided that the ship concerned operates exclusively in sea area D established pursuant to Article 4 of Directive 2009/45/EC, and the proximity of search and rescue facilities is ensured in that sea area.

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By way of derogation from Article 5(2) and without prejudice to the transitional period laid down in Article 5(3), 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.

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

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- (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 its substantive reasons for doing so. This notification shall be carried out by means of a database established and maintained by the Commission for that purpose, to which the Commission and Member States shall have access. The Commission shall make the adopted measures available on a publicly accessible website;
- (b) if within 6 months of such notification the Commission considers that the exemption is not justified or could have adverse effects on competition, the Commission may adopt implementing acts, requiring 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).

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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.

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The request shall be submitted to the Commission by means of the database referred to in paragraph 3. If within 6 months of such request the Commission considers that the derogation is not justified or could have adverse effects on competition, the Commission may adopt implementing acts, requiring 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).

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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.

**▼ M3***Article 10*

1. 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.

2. 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, that designated authority has immediate access to the information required under this Directive.

3. Personal data collected in accordance with Article 5 shall be kept by Member States no longer than is necessary for the purposes of this Directive, and in any event, no longer than:

- (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 any investigation or judiciary proceedings have been completed.

4. Without prejudice to other specific legal obligations under Union or national law, including obligations for statistical purposes, once the information is no longer needed for the purposes of this Directive, it shall be erased automatically and without undue delay.

*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 or disembarking the vessel.

2. A multiplicity of data collection on the same or similar routes shall be avoided.

▼ M3*Article 11a*

1. The processing of personal data pursuant to this Directive shall be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(1)</sup>.
2. The processing of personal data by Union institutions and bodies pursuant to this Directive, such as in the Single Window and the Safe-SeaNet, shall be carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(2)</sup>.

*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. Those delegated acts shall be adopted at least 3 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.

*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 7 years from 20 December 2017. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 7-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 3 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.

<sup>(1)</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>(2)</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).



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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 of 13 April 2016 on Better Law-Making.

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 2 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 2 months at the initiative of the European Parliament or of the Council.

**▼ M2***Article 13*

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

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2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup> shall apply.

**▼ 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.

**▼ M3***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 by 22 December 2026.

By 22 December 2022, the Commission shall submit to the European Parliament and to the Council an interim report on the implementation of this Directive.

**▼ B***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.

<sup>(1)</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).

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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.