

KEY ISSUES

Objective of the Directive: The Commission wants to reform the reporting obligations for operators of passenger ships so that, in an emergency, rescue authorities will have immediate access to important personal data.

Affected parties: Operators of passenger ships docking in EU ports



Pro: (1) A strict obligation to report the number of people on board passenger ships, and the switch to electronic communication of all registration data, will allow the rescue authorities to gain immediate access to important data in the event of an accident or emergency.

(2) The ability to report the number of people via the on-board AIS offers a more cost-effective and convenient procedure.

(3) Eliminating the potential overlap of reporting obligations reduces red tape.

Contra: –

CONTENT

Title

Proposal COM(2016) 370 of 6 June 2016 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

Brief Summary

► Context and objectives

- Under the existing Passenger Ship Registration Directive, in order to monitor compliance with the limit on the number of persons on board passenger ships using EU ports and to ensure effective rescue measures in the event of accidents,
 - all passengers and crew are counted by the ship's operator (old Art. 4),
 - personal data – such as name, gender, age or age category (adult, child) – is recorded (old Art. 5),
 - a "passenger registrar" (old Art. 2) acting on behalf of the ship's operator must ensure that this data is
 - "kept" in an on-shore passenger registration system approved by the Member States (old Art. 8, 10 and 11) and
 - is transmitted in the event of emergencies and accidents at the request of rescue authorities (old Art. 8)
- The existing Directive does not take account of newer EU rules and technical systems for the electronic recording and transmission of various shipping data, e.g. about passengers, crew, cargo, position:
 - In order for shipping to be monitored, passenger ships must have an "automatic identification system" (AIS) with which they can provide the authorities with shipping data by electronic means [Vessel Traffic Monitoring Directive (2002/59/EC), Art. 6 and Annex II].
 - The "SafeSeaNet" serves the electronic exchange of shipping data between the Member States [Vessel Traffic Monitoring Directive (2002/59/EC), Art. 22a and Annex III].
 - The "National Single Window" (NSW) of a Member State links the SafeSeaNet, customs and other systems for the electronic exchange of shipping data [Port Reporting Formalities Directive (2010/65/EU), Art. 5].
- The Commission wants to simplify and enhance the "complex and overlapping legal provisions" (p. 2) relating to the counting, recording and reporting of persons on passenger ships, by ensuring that
 - all exceptions to the obligation to report the number of persons are abolished,
 - personal data is collected electronically and rapidly reported to the authorities,
 - duplication of reporting obligations is removed and
 - ambiguous definitions are eliminated.

► **Scope**

The Directive covers all passenger ships using EU ports with more than twelve passengers on board (Art. 1 and 2) with the exception of (amended Art. 3)

- pleasure yachts and craft,
- ships of war and troop ships and
- passenger ships exclusively engaged in port areas.

► **Electronic reporting of the number of persons**

– The operator of a passenger ship using an EU port must count the number of all passengers and crew members on board a passenger ship before it departs and report it to the master of the ship (Art. 4 (1), Art. 6 (1) and amended Art. 6 (2)).

– The master of the ship must ensure compliance with the limit on the number of people on board (Art. 7).

– A "passenger registrar" acting on behalf of the ship's operator must ensure by electronic means that this data is (amended Art. 2, amended Art. 4 (2), amended Art. 8)

- registered in the "national single window" (NSW) of the Member State of the port of departure or
- made available to the rescue authorities via an "automatic identification system" (AIS).

The second option is intended for passenger ships that only carry out domestic trips of less than 20 nautical miles and therefore have no additional reporting obligations because these ships often have no internet link.

– Exceptions to the obligation to report the number of persons (old Art. 9 (3a)) are no longer possible.

► **Electronic reporting of personal data**

– The operators of passenger ships must collect the following personal data (amended Art. 5 (1)):

- forename and family name, gender, year of birth,
- nationality,
- when volunteered by a passenger, the need for special care or assistance in emergency situations.

– The personal data must be collected before departure and recorded in the NSW of the Member State of the EU port of departure or the EU port of arrival – in the case of trips from outside the EU – no later than 30 minutes after departure (amended Art 5 (2)).

– The collection of passengers' personal data takes place on a basis of self-declaration (Recital 11).

– Personal data may be collected for rescue purposes only (new Art. 5 (3)). It must be destroyed by the ship's operator immediately after it is recorded in the NSW (amended Art. 8).

– As a result of the direct transmission of personal data to the NSW, the operators' on-shore passenger registration systems are no longer necessary (p. 4).

- Member States therefore no longer have to approve passenger registration systems but simply check the accuracy and timeliness of data registration (new Art. 10).

- This therefore ends the duplicated reporting obligations for passenger ships which already have to transmit personal data to the NSW pursuant to the Schengen Borders Code [Regulation (EU) 2016/399] and until now also had to submit it to the passenger registration systems (old Art. 5).

► **Exceptions to the obligation to report personal data**

– The reporting obligation for personal data (Art. 5) only applies to passenger ships

- departing from an EU port and whose next port of call is more than 20 nautical miles away (amended Art. 5 (1) or
- arriving at an EU port from outside the EU (Art. 6 (1) and amended Art. 6 (2)).

– A Member State can still exempt a passenger ship from the obligation to report personal data (Art. 5) for journeys, without an intermediate stop, exclusively in a "protected sea area" where search and rescue facilities are nearby (amended Art. 9 (2)). A "protected sea area" is now defined, for the purposes of clarity, as a coastal sea area in which ships of Class D may operate [Passenger Ship Safety Directive (2009/45/EC), Art. 4 (1)] (amended Art. 2).

– The Member State notifies the Commission of this forthwith by way of a database set up and operated for this purpose.

Main Changes to the Status Quo

- ▶ Until now, the ship's operator had to keep the personal data in a shore-based passenger registration system and, in the event of emergency or accident, send it to the rescue authorities on request. Now it is transmitted electronically to a central collection point (NSW) on departure of the passenger ship.
- ▶ In future, in the case of domestic journeys of less 20 nautical miles, the number of persons can also be reported via the AIS.
- ▶ Until now, Member States had to approve the passenger registration systems of ships' operators. Now they only have to check the accuracy and timeliness of data registration.
- ▶ New: the nationality of passengers must also be recorded.
- ▶ Until now a "protected sea area" was generally defined as "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 ship-wrecked persons can land and in which the proximity of search and rescue facilities is ensured" (old Art. 2). It is now defined as a coastal sea area in which ships of Class D may operate [Passenger Ship Safety Directive (2009/45/EC), Art. 4 (1)].

Statement on Subsidiarity by the Commission

The Commission wants to ensure uniform and coherent requirements for the registration of all ships using ports in the EU. This cannot be achieved by unilateral measures of the Member States. Only uniform EU legislation will guarantee a level playing field between all ship operators irrespective of their nationality or the flag their ships fly and without distinction between domestic and international journeys (p. 4).

Policy Context

The Commission, in its EU Transport Policy White Paper [COM(2011) 144; see [cepPolicyBrief](#)], has already indicated the need for reform of the existing EU law on the safety of passenger ships. As part of the Commission's REFIT Agenda for better regulation, legislation on the safety of passenger ships has been examined ["Fitness Check", see COM(2015) 508]. This proposal for a Directive will implement the opportunities for simplification identified there..

Legislative Procedure

6 June 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Mobility and Transport (leading)
Committees of the European Parliament:	Transport and Tourism (leading), Rapporteur: Izaskun Bilbao Barandica (ALDE Group, ES)
Federal Ministries:	Transport (leading)
Committees of the German Bundestag:	Transport and Digital Infrastructure (leading); EU Affairs; Tourism
Decision-making mode in the Council:	Qualified majority (adoption by 55% of the Member States making up 65% of the EU population)

Formalities

Legislative competence:	Art. 100 (2) TFEU (Transport)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

A strict obligation to report the number of people on board passenger ships **and the switch to electronic communication of all registration data** increases passenger safety because both rules **allow the rescue authorities to gain immediate access to important data in the event of an accident or emergency** irrespective of whether a contact person is available.

The ability to report the number of people via the on-board AIS – rather than via the internet to the NSW – **provides a more cost-effective** and convenient **procedure** for domestic passenger ships that cover less than 20 nautical miles and are therefore not subject to any other reporting obligations.

It does involve acquisition costs, however, amounting to "approximately 2000 EUR" [SWD(2016) 190, p. 32] for passenger ships which are currently exempt from the duty to carry an AIS. This exemption is possible for ships below 15 m in length or below 300 gross tonnage operating domestically [Vessel Traffic Monitoring Directive (2002/59/EC, Annex II Section IV)]. In view of the increased effectiveness of search and rescue measures and the

additional benefits of AIS as an aid to collision-free maritime transport, these costs are justifiable. In cases of hardship, Member States should be permitted to assume the costs – given the exemption rules in the Vessel Traffic Monitoring Directive (2002/59/EC) continue to be a heavy burden and provided the aid does not give rise to distortions of competition.

The mandatory reporting of nationality in the declaration speeds up consular assistance in the event of an accident or emergency and avoids any significant additional burden for ships' operators that already carry out electronic registration.

A cost-effective electronic data-collection procedure should be made available to those passenger ships on national transport routes, that have until now been exempt from reporting obligations to the NSW under the Port Reporting Formalities Directive (2010/65/EU), but **will in future be subject to the obligation to transmit personal data electronically**. This is because otherwise there will be a risk of many business models becoming unprofitable. An examination in various countries of the technical solutions, which have proven successful in practice, is therefore recommended.

The abolition of the obligation of Member States to approve passenger registration systems is appropriate because this saves red tape and the data is now no longer kept by shore-based passenger registrars but sent directly to a central collection point. This provides the authorities with resources to carry out effective monitoring of the accuracy and timeliness of the personal data to be transmitted. **Eliminating the potential overlap of reporting obligations also reduces red tape.**

Clarification of the rules under which a Member State can be exempt from reporting obligations, strengthens the internal market because it creates uniform and clear conditions for the exemption and gives the Commission the possibility to intervene where there is an adverse impact on competition.

Finally, the clarification of ambiguous terms such as "protected sea area", which have led to diverging applications of the Passenger Ship Registration Directive (98/41/EC), also increases passenger safety because it provides legal certainty and facilitates the enforcement of safety regulations.

Legal Assessment

Legislative Competency

Unproblematic. The EU is permitted to adopt "appropriate provisions" for maritime and inland waterways transport (Art. 100 (1) TFEU).

Subsidiarity

Unproblematic. Maritime transport has a strong cross-border element. Uniform rules on the recording and reporting of persons on board passenger ships can only be issued at EU level.

Conclusion

A strict obligation to report the number of people on board passenger ships and the switch to electronic communication of all registration data, allow the rescue authorities to gain immediate access to important data in the event of an accident or emergency. The ability to report the number of people via the on-board AIS offers a more cost-effective procedure. A cost-effective electronic data-collection procedure should be made available to those passenger ships on national transport routes that will, in future, be subject to the obligation to transmit personal data electronically. Eliminating the potential overlap of reporting obligations reduces red tape.