



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

**Council common position on the amended proposal for a Council Directive  
on the registration of persons sailing on board passenger ships**

**COMMUNICATION FROM THE COMMISSION**  
**TO THE EUROPEAN PARLIAMENT**

**Subject : Council common position on the amended proposal for a Council Directive on the registration of persons sailing on board passenger ships**

**1. History of the file :**

Proposal transmitted to the Council on :	25.11.1996
Opinion of the European Parliament (first reading) delivered on :	29.05.1997
Amended proposal adopted by the Commission on :	23.07.1997
Common position adopted on :	11.12.1997
Opinion of the Economic and Social Committee delivered on :	23.04.1997

**2. Purpose of the Commission proposal :**

The purpose of this proposal is to enhance safety at sea and to ensure that search and rescue and the further aftermath of any accident which may occur at sea can be dealt with more effectively all over the Community.

The proposal is a response to a request from the Council in the aftermath of the Estonia to deal with the registration of passengers on board of ro-ro vessels. In addition it takes full account of the mandatory rules adopted at international level (SOLAS Convention) addressing the registration of passengers on board of all passenger ships sailing on international journeys.

The SOLAS provisions however contain several possibilities for exemptions. In fact SOLAS is an empty box if Member States or third countries, acting as flag States, apply these exemptions. Therefore the Commission was bound to propose the adoption of a set of requirements to be applied by the Member States as port State rules, applicable to all passenger ships, irrespective of the flag they fly, when sailing to and from European ports. In doing so the Commission ensures a harmonized implementation of the SOLAS principles on the registration of passengers in the Community, without distortion of competition between ports.

The proposal :

- ensures that relevant information on passengers is available for the search and rescue authorities whenever necessary;
- ensures through the mandatory counting of the passengers before the departure of the ship that passenger ships do not carry more passengers than authorized according to the relevant safety certificates;

- establishes common requirements for the registration of passengers on board passenger ships sailing to and from European ports, in principle for all journeys of more than 20 miles;
- ensures a workable procedure at company level for the registration of the passengers' particulars;
- ensures that the competition between companies operating on similar shipping routes is not affected as well as an adequate protection of personal data;
- foresees possibilities to exempt and derogate under well-defined conditions.

### 3. **Comments on the common position :**

#### 3.1 General observations on the common position :

In its first reading the European Parliament adopted twelve amendments to the Commission's original proposal. Six of these amendments dealt with or were related to concerns outside the scope of the Directive and could therefore not be accepted by the Commission. In accepting four of the other amendments, or at least the intention they contain, the Commission fulfilled the Parliament's main request: i.e. to introduce more flexibility, as far as this does not affect the application of the registration in areas where dense traffic exists and with often prevailing weather conditions. For more details on the follow-up of the Parliament's amendment reference is made to the Commission's amended proposal<sup>1</sup> and in particular to the explanatory memorandum.

The Council of [ ] Ministers adopted a common position on a text which contains the substance of some of the amendments proposed by the European Parliament as well as a number of additional provisions.

#### 3.2 Outcome of the amendments of the European Parliament :

Taking account of the Commission's follow-up to the Parliament's amendments, both the Commission and the Council accepted the spirit of the wording of amendments 8 (first part), 9 and 12. They agreed with the substance of these amendments and changed Article 9, in conjunction with some definitions in Article 2, thereby introducing a possibility for explicit derogations to be granted by the Commission in well-defined circumstances, and after consultation with the Committee set up to assist the Commission.

The Commission and subsequently the Council accepted an improved wording for the second paragraph of Article 8 along the lines of amendment 11 and also agreed to refer to the precise age of a passenger in Article 6, as proposed by the second part of amendment 8.

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<sup>1</sup> COM(97) 340 final of 23.07.97

3.3 New provisions introduced by the Council and position of the Commission thereto :

**Recitals :**

The Council modified and re-arranged the recitals in accordance with the text of the common position in order to rationalise them. The Commission agreed with this re-arrangement for reasons of consistency and clarity.

**Title:**

The Council modified the title to clarify from the beginning that the Directive only addresses traffic to or from Community ports. The Commission agreed with this idea and could therefore renounce to the second paragraph of Article 3 of its proposal.

**Article 1 :**

An editorial improvement of the text was proposed by the Council for a better consistency with the objectives of the directive and was accepted by the Commission.

**Article 2 :**

Apart from the editorial improvements, the Council, followed by the Commission, replaced the definition of "designated person" by a definition of "passenger registrar" to avoid any confusion with the designated person in the ISM Code.

Following the Commission's concern of coping with more flexibility under well-defined circumstances, the Council agreed with the replacement of the definition of "sheltered water" by the definition "protected sea areas", as well as with the inclusion of a definition of "regular service".

**Article 3:**

Apart from an editorial amendment, paragraph 2 was deleted (See Title).

**Article 4:**

This Article was editorially improved and re-named as Article 6 and placed after the two main articles of the Directive, thus following a more logical order. The Commission concurred with this approach.

**Article 5:**

Became Article 4 and was editorially improved.

**Article 6:**

Became Article 5 and was editorially improved.

#### **Article 7:**

The Council clarified this safety requirement using a wording fully in line with the SOLAS Convention. The Commission endorsed this improvement.

#### **Article 8:**

In addition to the above-mentioned amendment of the second paragraph, the Council modified the third paragraph and its related recital to take full account of the EC Directive on data protection and proposed a number of editorial amendments to the provisions of this Article. The Commission accepted these amendments because they add to the flexibility of the text. However, the Commission believes that in most instances the data protection requirements laid down in this article shall result in passenger data being deleted once it has been confirmed that the ship has completed the voyage in question safely.

#### **Article 9:**

Besides a positive response to the concern for more flexibility (See 3.2) and editorial improvements, the Council added:

- a new sub-paragraph to paragraph 1, imposing a joint decision of two Member States, if one of them decides to lower the 20-mile threshold;
- a new sub-paragraph dealing with the special situation of the Messina Strait (Italy), for which the Council accepted that during a well-defined period the counting of persons aboard passenger ships crossing this Strait might be done in a simpler way.

The Commission agreed with these amendments. The imposing of a joint decision will indeed prevent a potential conflict between two Member States. The special derogation on the method of counting the persons aboard ships crossing the Messina Strait was accepted by both the Commission and the Council due to the fact that Italy evoked specific operational reasons to justify the measure and that the derogation shall be applied for a limited period of time.

#### **Article 10:**

This Article was editorially improved.

#### **Article 11:**

Besides an editorial improvement of the Article, the Council superseded the criterion "Accessibility" by "Availability" and found it more appropriate to include the "Readiness" criterion directly in paragraph 2 of Article 5. The Council was further of the opinion that reference to an alternative means of registration was too cumbersome. The Commission concurred with this approach.

**Article 12:**

The Council, in the light of its proposal to change the advisory Committee provided for in article 13 into a regulatory Committee, proposed a number of changes to the provisions governing the tasks conferred to that Committee. The Council, taking account of the new provisions laid down in Article 9 no longer saw the need to establish a harmonized regime of exemptions and found it inappropriate to cater for hypothetical IMO resolutions and circulars related to the registration systems.

The Commission, in line with accepting the Council's proposal to change the procedure I Committee into a III(a) Committee procedure, also accepted the changes made to the Committee's tasks.

**Article 13:**

See §.3.4 on problems regarding committee procedures when adopting the common position.

**Article 14:**

Became Article 15 and was editorially improved.

In supporting the need for a Community-wide uniform regime, without distinguishing between international or domestic voyages and recognizing that Member States and companies might need more time to set up the appropriate registration systems, the Commission accepted to set a later date for the implementation of the registration of the particulars of the persons (1 January 2000 instead of 1 January 1999) as well as for the coming into force of the Directive (1 January 1999 instead of 1 January 1998). This would provide the Member States with ample time to prepare the transposition of the provisions of the Directive into national legislation.

**Article 15:**

Became Article 16.

**Article 16:**

Became Article 17.

3.4 Problems regarding committee procedures when adopting the common position :

For the purpose of conferring implementing powers on the Commission, the initial proposal provided for a procedure I Committee, which was supported by the European Parliament. However, the Council requested a III(a) Committee procedure. Having regard to the precedents set by other Council Directives in the field of maritime safety, the Commission accepted this request.

#### **4. Conclusions**

The Commission is of the opinion that the text of the common position is acceptable since it respects the basic principles of the original proposal and provides added value by its clarifications. Its provisions introduce more flexibility without affecting the safety concern and the need for an efficient handling of the aftermath of any accident that might occur in non-protected sea areas.