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PROPOSAL FOR A COUNCIL DIRECTIVE
ON THE REGISTRATION OF PERSONS
SAILING ON BOARD OF PASSENGER SHIPS

(presented by the Commission)

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EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. In the aftermath of the "Estonia" disaster the Council requested¹ the Commission to present a proposal for a mandatory requirement on the registration of passengers aboard Ro-Ro passenger ferries. Consequently the Commission has included this item on its legislative programme for 1996.

Information on passengers on board passenger ships is a fundamental requirement to enhance effectiveness of emergency services in the aftermath of an accident. For example, it would enable the competent authorities to provide rapid and adequate information to the families of persons aboard about the situation. Moreover, information is needed:

- to be aware of whom to look for and what precautions to take: Search and rescue (SAR) operations may be more efficient when knowing the categories of people you are dealing with (children/elderly, male/female etc.),
- to provide more clarity on the legal issues, e.g. insurance matters in case of death or disappearance. Persons involved in maritime disasters are quite often mutilated beyond recognition, or it is impossible to retrieve them from the wreck, or they cannot be found,
- to improve medical care in case of serious injury. In most States medical records may be accessed to if the patient is correctly identified, hence enabling more adequate medical treatment.

Furthermore, precise information on the number of persons on board is required to ensure they do not exceed the maximum permitted for a given ship.

2. The question of passenger registration has also been addressed within the International Maritime Organization (IMO). In November 1995 a SOLAS Conference adopted an amendment to the SOLAS Convention introducing the principle of passenger registration in a specific Regulation (Regulation III/24-2). This new SOLAS rule shall apply from 1/7/1997 to all passenger ships in international voyages.

Although the Governments, when adopting this new SOLAS rule, never had the intention to reach that conclusion, the scope of SOLAS Regulation III/24-2 is restricted to vessels built after 1/7/1986. To remedy this situation the European Commission and in its capacity as President of the Council, Italy, proposed to the Expanded Maritime Safety Committee to amend the Regulation to ensure the application to all passenger ships in international voyages.

¹ Council Resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries, (94/C 379/05), O.J. N° C 379 of 31.12.94, p.8.

On 4 June the Expanded Maritime Safety Committee adopted resolution MSC 47 (66) "Adoption of amendments to the International Convention for the Safety of Life at Sea, 1974" replacing the existing text of Chapter III of the Annex of SOLAS by a new Chapter. Regulation III/24-2 on "Information of passengers" has been replaced by a new Regulation III/27, which stresses that the Regulation is applicable to all passenger ships in international voyages. This amendment shall enter into force on 1/7/1998.

- 3 a) The Commission is of the opinion that this SOLAS Regulation should form the basis for the EC legislation. For this reason the Commission does not restrict the scope of its proposal, as initially suggested by the Council, only to ro-ro ferries on international voyages, but proposes to extend the scope to encompass all passenger ships operating to and from Community ports, both on domestic and international voyages.

With this proposal the Commission strives to ensure a harmonized and coherent implementation of SOLAS Regulation III/27 for all passenger ships sailing from EC ports and to ensure that all contracting parties to SOLAS apply correctly the relevant SOLAS provisions for their ships sailing to an EC port. In doing so, the Commission was faced with two specific problems: on one hand some shortcomings of Regulation III/27 and on the other, the particularities of SOLAS for which it was bound to find an acceptable solution.

As main shortcomings the Commission identified the scope of the SOLAS Regulation III/27, which only addresses international voyages and the wide range of possibilities to derogate from this Regulation.

Flag State Administrations may for example exempt passenger ships from the requirements to provide detailed information if the scheduled voyages of such ships render it impracticable for them to prepare such records. Moreover, under Regulation III/2.1 flag State Administrations are given the possibility to exempt ships which, in the course of their voyage, do not proceed more than 20 miles from nearest land. This creates the possibility to exempt from the Regulation passenger ships sailing on a voyage, irrespective of its length, in a zone of 40 miles between two shores. Possibilities to derogate, combined with possible divergent interpretation by both Member States and third countries would undoubtedly create uncertainty and lead to a differing implementation of legislation in the EU. The Commission's proposed Directive introduces, in the EU, a coherent legislative framework for the registration of persons sailing on board of passenger ships to and from Community ports.

Although the 1974 SOLAS Convention and its 1978 Protocol contain commitments of the Contracting Governments, most of the provisions, particularly those of Chapter III of SOLAS, are meant to be applied to ships flying the flag of States of the Contracting Governments. Regulation III/27 deals, however, with search and rescue matters, for which the flag State not always bear responsibility. It must be stressed that international law does not allow a flag State to regulate matters which do not fall under its jurisdiction. This is the case for search and rescue (SAR) provisions, which are the sole responsibility of the port State. A coherent and practicable implementation of Regulation III/27 for search and rescue

purposes therefore requires an appropriate interface with the shore-based authorities that bear responsibility for the operative area under the 1979 International Convention on Maritime Search and Rescue. Underlining that the "right" given to a flag State to exempt ships from SOLAS provisions cannot lead to making the "exemption the rule and the general rule becoming the exemption", the Commission is of the opinion that the obligations of flag States to implement Regulation III/27, and in particular the possibility to exempt some ships, cannot be exercised without a consensus among the port States concerned.

In order to ensure a harmonized, coherent and practicable information and registration system, offering the best guarantees to passengers and crew in case of an accident, the Commission with its proposal, therefore, addresses the Member States both as flag States and as port States. The latter responsibilities will be implemented through relevant port State obligations imposed on all ships, irrespective of their flag, when departing from a Community port. Furthermore, this Directive will help all flag States to implement their SOLAS obligations in a coherent manner in using the information and registration framework set out by this Directive.

The provisions of this Directive, related to passenger ships flying a flag of a third country on their departure from Community ports, do not impose any higher requirements regarding passenger registration than the general rules of SOLAS. Yet, as far as derogations are concerned, the Directive imposes stricter requirements than the SOLAS rules.

This implies that port States can only grant derogations to ships departing from their ports in accordance with the provisions of the Directive. Therefore, also ships flying the flag of a third country might not be exempted when departing from a Community port from the obligations of registering passengers, if the conditions set out by the Directive for granting exemptions are not fulfilled. Thus in certain cases, ships flying the flag of a third country which are exempted by their flag States under SOLAS rules might not be exempted by the port State according to the Directive.

The Commission points out that according to the general rules of international law, it could be deemed justified for the port State to impose certain obligations on ships flying the flag of another State whenever such obligations fall within the competence of the port State. For search and rescue activities, this is the case.

It is not conceivable that in the SAR context a flag State should challenge a harmonized implementation of exemptions from the general SOLAS provision, imposed by a port State with the aim to apply coherently, on all ships irrespective of their flag, a general SOLAS principle.

Furthermore, as the provisions of the Directive apply to all ships flying a Member State flag, it is not considered impracticable to impose the registration of the particulars on passengers on board passenger ships on all voyages of more than 20 miles from the port of departure. Accordingly, exemptions are authorized only for passenger ships sailing exclusively in sheltered waters. Nor is it conceivable for a third flag State to argue about the sheltered nature of a voyage within the territorial waters of another State.

To ensure that third countries apply correctly their SOLAS obligations for passenger ships which depart from a port located outside the Community and bound for an EC port, without jeopardizing the SAR responsibilities of the EC port States, the Community is bound to impose an obligation on the Member States to ensure that a company operating passenger ships, arriving at their ports from ports located outside the Community, will ensure that it provides, when needed for search and rescue purposes, the relevant information on passengers as defined in this Directive to the designated SAR authority. If it is revealed through regional SAR exercises or upon arrival in a Community port that the company is not-complying with the passenger registration provisions, the Member States shall make use of effective and dissuasive sanctions.

With regard to exemptions by flag States whose passenger ships sail to an EC port, due account should be taken of the MSC Circular 606 on Port State Concurrence on SOLAS Exemptions, issued by the Maritime Safety Committee of the IMO. This circular recommends that flag States, prior to the operation of one of their vessels from a port of a State other than the flag Administration, should work together with the port State to resolve any disagreements concerning the suitability of such exemption.

To avoid misunderstandings about the interrelation of flag State commitments under SOLAS and port State responsibilities for passenger ships involved in international journeys, the Commission found it appropriate to address this matter in a separate article.

- 3 b) Considering the legal constraints and the practical implications concerning particularly journeys accomplished fully outside the Community, the Commission found it inappropriate to include such journeys in the scope of this Directive. When implementing, as flag States, their obligations arising from SOLAS Regulation III/27, Member States should set up the appropriate interface with the shore based authorities responsible for search and rescue.

PURPOSE OF THE LEGISLATION

4. The purpose of the legislation is to provide information to ensure that the certified number of persons on board a passenger ship does not exceed the number for which the ship and its safety equipment have been certified, and to facilitate search and rescue (SAR) operations.

JUSTIFICATION FOR A COUNCIL DIRECTIVE

5. a) *What are the objectives of the envisaged action proposal in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and what is the solution so far) ?*

The obligations of the Community in this context are the improvement of safety in maritime transport as foreseen in Article 84 (2) of the Treaty, read in conjunction with Article 75 (1) (c). The objective of the action proposed is the establishment of a harmonized regime to ensure that all passenger ships, flying the flag of a Member State, when sailing to and from Community ports do not carry more passengers than authorised according to the relevant safety certificates. In addition, an appropriate information framework will be achieved facilitating search and rescue operations if an accident with a passenger vessel occurs.

Millions of European citizens and many others travelling within Europe use passenger ships sailing from hundreds of ports within the Community. Almost all Member States are concerned as flag States as well as port States. The Directive will avoid a divergent implementation in the Member States of the international provision on the registration of passengers and will ensure that similar rules will be applied on passenger ships involved in domestic voyages, where harmonized international rules do not at present exist. Common safety requirements are thus required not only in order to attain a common level of safety but also to ensure that relevant information on passengers is available to the search and rescue authorities whenever necessary. Furthermore, the harmonized rules will indirectly ensure that the competition between companies operating on similar shipping routes is not affected.

6. b) *Is the envisaged action solely the responsibility of the Community or is the responsibility shared with the Member States?*

The envisaged action does not relate to an exclusive competence of the Community.

7. c) *What is the most efficient solution taking into account the resources of the Community and of the Member States?*

In view of the internal market dimension of maritime passenger transport, the most efficient solution is the setting up of, at Community level, common safety requirements and system providing information on passengers.

8. d) *What is the concrete added value of the action envisaged by the Community and what would be the cost of inaction?*

The Community has a major interest in the establishment and maintenance of harmonized safety standards for passenger ships, and when an accident occurs to ensure that passengers and crew could be rescued in the best conditions.

Appropriate rules have been initiated at international level. However, these rules allows considerable derogation possibilities and they do not apply to passenger ships operating on domestic journeys.

The costs of no action would be insufficient protection for passengers and crew, persistence of an overly complex and uncertain system for operators within the Community, as well as distortions of competition.

9. e) *What forms of actions are available to the Community? (recommendation, financial assistance, regulation, mutual recognition)*

International negotiations have already resulted in establishing rules which are not precise enough or leave too much room for derogation on the registration of passengers. In addition, these rules do not address domestic voyages and are thus not comprehensive. In order to provide for a homogeneous and effective protection of passengers, it is hence necessary to introduce binding measures, either in the form of a Directive or a Regulation. By embodying a broad Community system in an enforceable legislative framework, divergent national measures will be avoided.

10. f) *Is uniform legislation necessary or does a Directive setting the general objectives and leaving the execution to the member States provide for a satisfactory result?*

In accordance with the proportionality principle, a Directive will meet the sufficiency criteria as this will establish common requirements at Community level harmonizing the safety level of passenger ships engaged in voyages to and from Community ports. International journeys starting outside the Community will be covered by the relevant SOLAS rules, for which no exemptions should be granted other than those foreseen in the Directive.

The implementation of the practical and technical procedures of the Directive is left to each Member State. In doing so, this Directive leaves to each Member State the responsibility of deciding on the implementation tools which best fit its internal system.

CONTENT OF THE COUNCIL DIRECTIVE

11. As a general principle the total number of persons on board any passenger ships operating from a Community port shall be counted prior to departure and shall be communicated to the master and to a designated person ashore and, as far as necessary, to the competent Authority. This provision shall apply to all passenger ships irrespective of the type of journey.

With regard to the collection of additional information on passengers for SAR purposes such requirements will be imposed on all passenger ships sailing to and from a Community port and undertaking voyages of at least 20 nautical miles between two ports. Member States may choose to lower the 20 nautical mile limit if they consider the recording of the information necessary. The relevant provisions of the Directive shall apply also for such voyages. Moreover, the proposal recognises the need to allow derogations to very short voyages such as ferries spanning a strait or a bay and passenger ferries exclusively used for commuter or similar scheduled services.

The choice of a 20 mile threshold is the result of the cumulative effect of a number of requirements proposed in order to ensure that a set of general principles and specific conditions, put forward by the Commission and the Member States, are fully taken into account. Inter alia, the need to ensure that all passengers and crew sailing to and from Community ports should have the benefit of the highest possible safety requirements and best possibilities for an adequate search and rescue in case of an accident, the same rules for ships sailing on international or on domestic voyages and no distortion of competition between Community ports. The provisions should apply to all passenger ships, irrespective of their flag or type of journey, sailing to and from a Community port, even if the length of the journey varies, when they operate in well defined areas, where dense traffic exists, and with prevailing, often adverse weather and sea conditions. The latter is the case for the area defined in regional agreement concerning stability requirements in North-West Europe and the Baltic (Stockholm Agreement).

The Commission is of the opinion that it should be made possible to consider particular and specific conditions, at Member State level. This implies a limited possibility to derogate, well within what is internationally agreed. In addition, due account should be taken of the effect of the coming into force of new international, as well as EC, measures aiming to ensure that passenger ships are a safe means of transport. The granting of derogations, however, should not lead to an unacceptable administrative burden for both the Member States and the Commission and therefore a Committee procedure is introduced only in the case of an ex post objection to a Member State measure.

12. The Commission is of the opinion that the collection of information should be influenced in a manner that would not substantially hamper the operation of passenger ships in ports.

The techniques applied to count passengers or register names may be left to the responsibility of the Member States. Their national regulations should provide clear and detailed procedures administering registration. The functional criteria established in the EC legislation are the a minimum to be fulfilled. In establishing domestic regulations in line with the functional criteria one shall take into account the fact that there are today hardly any technical constraints regarding systems for the registration of passengers.

SPECIAL CONSIDERATIONS

Article 1

This Article defines the purpose of the Directive: to enhance safety at sea through the improvement of passenger information and identification for search and rescue purposes in case of an accident.

Article 2

This Article contains the definitions of the key words of the Directive. The Directive strives to ensure consistency with definitions in international legal instruments such as the SOLAS Convention and EC legislation in the maritime safety field.

Article 3

In defining the scope of application of the Directive, the definition of passenger ships as defined in the preceding Article is further detailed. It explains which ships and services are bound by the provisions of the Directive. Ships entitled to sovereign immunity under international law and pleasure yachts not engaged in trade are excluded from the scope of the Directive. In addition ships flying the flag of a Member State carrying out transport services fully outside the Community are excluded.

Article 4

As emphasized under para 3 a) of the general introduction, this Article clarifies the co-existence of this Directive with the relevant SOLAS provisions.

Article 5

This Article, whilst reiterating a general practice of good seamanship, lays down the obligation to count the number of passengers on board a ship and to communicate it to the master prior to departure. This helps to ensure that a passenger ship does not depart from port with a number of passengers on board higher than legally permitted. Whilst ensuring that the number of passengers on board a passenger ship is communicated and made available ashore, the second paragraph enables States to make use of alternative communication means serving that purpose.

Article 6

This Article requires that additional information on passengers on board ships undertaking voyages of more than 20 miles between two ports are to be recorded. In case of an accident such information is essential not only for search and rescue services but also in order to keep relatives and others concerned informed of the situation.

The Council Resolution of 22 December 1994 suggests that time could be used as the decisive parameter when choosing a limit for requiring registration of names. The Commission has, however, chosen to deviate from this recommendation due to the recent large increase of high speed passenger vessels which may complete long journeys in a very short time. The possibility to lower the 20 mile limit under the provisions of Article 9 enables Member States to fully apply SOLAS Regulation III/24-2. para 3 to all passenger ships engaged on international voyages.

Article 7

This Article establishes that the master must always be aware of the number of passengers on board, and that he shall ensure that this number does not exceed the number to which the ship is certified. The latter is a binding requirement of an existing practice of good seamanship.

Article 8

Here the obligations for companies carrying passengers from Community port are laid down. Paragraph 1 requires companies involved in carrying passengers to appoint a designated person responsible for keeping and transmitting the information required by authorities. This paragraph also addresses the minimum requirements of passenger registration systems. In leaving the possibility of choice in implementing the provisions of the directive for the companies, they can make use of the possibilities that modern EDI and computer technology offers. In establishing that the information on passengers shall not be kept longer than necessary for the purposes of this Directive, the various Member State legislations containing rather strict provisions on the protection of privacy are not unduly affected.

Article 9

This Article deals with the possibilities to derogate from the provisions of the Directive, hence addressing the wish of several Member States to have the possibility to apply the provisions of the Directive also to ships undertaking voyages of less than 20 miles between two ports. It must be pointed out, however, that when a Member State decides to lower the 20 mile threshold, the provisions of the Directive are still to be fulfilled. Moreover, the Article takes into account the specific problems that Member States may face regarding specific specialized journeys, such as regular commuter services or ferries spanning a bay or a strait. This Article also permits Member States to exempt from the registration provisions of this Directive passenger ships operating in sheltered waters provided that the operational conditions and the geographical area in which such ships operate can offer sufficient and adequate search and rescue facilities. The possibility that a flag State does not concur with a derogation granted by a Member State acting as a port State is also covered.

Article 10

The primary object of this Directive is the enhancing of safety throughout the Community. This can be achieved only by a uniform application of the provisions of this Directive. Member States are requested to take all necessary steps in order to ensure that the registration systems as set up by the companies concerned meet the functional criteria established by this Directive. Reaffirming this purpose, Member States are requested to test the fulfilment of these standards.

Article 11

This Article establishes the functional criteria that the passenger registration systems established by companies have to meet. The main criteria is an easy and fast handling of the data. In the case of breakdown of registration systems, a specific paragraph requires companies to establish a back-up alternative registration system that would meet the same criteria. Moreover, paragraph 2 addresses the question that on similar routes, Member States shall act in a manner that would avoid a multiplicity of registration systems.

Article 12

This Article allows the Commission to amend, in accordance with the procedure laid down in Article 13, the Directive, to ensure the application, for the purpose of this Directive, of subsequent amendments to the SOLAS convention which have entered into force after the adoption of this Directive and the functional criteria mentioned in Article 11, paragraph 1 in order to take into account future developments in safety regulations at international level. Without prejudice to the procedures amending International Conventions, the application, for the purpose of this Directive, of subsequent amendments thereto which have entered into force shall be decided upon in accordance with the procedure laid down in Article 13.

Article 13

Here the Committee instituted under Article 12 of Council Directive 93/75/EEC¹ is incorporated, describing also the advisory procedure which must be followed when the Directive is referring to Committee procedures.

Article 14

In defining the dates when the provisions of the Directive shall be fully operable, the Directive proposes one year after the dates as established by the SOLAS Convention for the same purpose.

Articles 15 and 16

No comments.

¹ OJ No. L 247, 5.10. 1993, p. 19 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

**Proposal for a Council Directive on the registration
of persons sailing on board of passenger ships.**

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 Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure referred to in Article 189 c) of the Treaty³ and in co-operation with the European Parliament⁴,

Whereas Community action in the sector of maritime transport should aim at the improvement of transport safety; whereas the Community has a major interest in the establishment of harmonized safety standards for passenger ships; whereas this Directive represents one of a series of measures improving safety at sea;

Whereas the Community is seriously concerned about the latest shipping casualties in which passenger ships were involved resulting in a massive loss of life, particularly the "Estonia" accident; whereas European citizens and many others using passenger ships and high speed passenger craft throughout the Community have the right to expect, and to rely on an appropriate level of safety and upon an adequate information system which will facilitate search and rescue operations; whereas it appears necessary to take all appropriate measures to achieve these expectations and avoid the possibility that passenger ships involved in marine accidents in waters for which Member States bear responsibility under the 1979 International Convention on Maritime Search and Rescue would present unnecessary concerns for relatives and other persons concerned;

Whereas the safety of ships is the primary responsibility of flag States; whereas Member States can ensure compliance with adequate safety management rules by passenger ships flying their flag and companies operating them; whereas the only way to ensure the safety of all passenger ships, irrespective of their flag, operating or wishing to operate from their ports, is for the Member State to require effective compliance with safety rules as a condition for operating from their ports;

Whereas for search and rescue purposes the possibility to regulate exemptions of passenger ships sailing to and from a port of a Member State cannot be left solely to the flag State; whereas it is only the port State that is in the position to determine the requirements for best possible search and rescue operations;

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Whereas Member States and third countries have no reasons, other than those mentioned in this Directive, to derogate from the relevant SOLAS provisions on "information on passengers" for voyages starting from or arriving to Community ports

Whereas it appears 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 information on passengers needs to be established in order to facilitate identification of persons after an accident;

Whereas this Directive recalls what measures are available to Member States under international law; whereas the relevant international Conventions leave important points of interpretation to the discretion of individual Member States; whereas there does not at present exist an international mandatory standard on the registration of passengers to which all passenger ships even on domestic voyages must conform;

Whereas the mandatory registration of passengers for all passenger ships regardless of their flag also takes into account Regulation 27, of the SOLAS Convention which contain similar requirements; whereas this Directive does not affect the right of Member States to impose certain more stringent requirements in respect of the passenger vessels concerned hereby;

Whereas for reasons of avoiding distortion of competition, a uniform approach has to be established in dense traffic areas with varying distances between ports, whereas the 20 mile threshold is the result of taking into consideration general principles and specific concerns endorsed by all Member States, whereas passenger ships operating exclusively in sheltered waters and passenger ships operating on very short scheduled voyages in sheltered waters constitute a more limited risk and should, therefore, enjoy a possibility for a derogation;

Whereas in view, in particular, of the internal market dimension of maritime passenger transport, action at Community level is the only possible way to establish a common minimum level of safety for ships throughout the Community; inaction by the Community would not only lead to insufficient protection for passengers but to the persistence of overly complex and uncertain systems within the Community to the detriment and expense of the industry;

Whereas a common minimum level of safety requirements must be attained by binding Community measures; a Council Directive, respecting the proportionality principle by leaving to each Member State the right to decide the implementation tools that fits its internal system is, however, sufficient in this case;

Whereas the collection and processing of data about named individuals is necessary for the identification of passengers in case of an accident; whereas the collection and processing of such data must be carried out in accordance with the principles of data protection laid down in Directive 95/46/EC; whereas, in particular, individuals should be fully informed at the time of collection about the purposes for which the data are required, and the data should be retained for only a very short period, being deleted once the ship in question has safely arrived at its destination;

Whereas it is necessary for a Committee composed of the representatives of the Member States to assist the Commission in the effective application of the Directive; whereas the Committee set up in Article 12 of Council Directive 93/75/EEC can assume this function;

Whereas through this Committee certain provisions of the Directive may be adapted to take into account future amendments to the SOLAS Convention, and to establish additional provisions to ensure a harmonized regime of exemptions and for the implementation of IMO Resolutions;

Has adopted this Directive:

Article 1

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

Article 2

For the purpose of this Directive:

- "persons" means all people on board, whether passengers or crew, irrespective of age.
- "a passenger ship" means a seagoing passenger ship and a high speed passenger craft which carry more than twelve passengers.
- "a high speed passenger craft" means a high speed craft as defined in regulation 1 of chapter X of the 1974 SOLAS Convention, as amended at the date of adoption of this Directive.
- "Company" means the owner of the passenger ship any other organization or person such as the manager, or the bareboat charterer, who has assumed responsibility for operating the passenger ship from the owner.
- "designated person" means the responsible person designated by a company to fulfil the ISM-Code obligations or any other person designated by the company as responsible for the keeping of information on persons embarked on board a passenger ship of the company.
- "designated authority" means the competent authority of the Member State responsible for search and rescue and mentioned in Article 8.
- "ISM-Code" means the International Management Code for the Safe Operation of Ships and for the pollution prevention, adopted by the IMO through Assembly Resolution A.741 (18) of 4 November 1993.
- "a mile" is 1852 metres.

- "sheltered waters" means areas where the annual probability of the significant wave height exceeding 1,5 m is less than 10%, and in which a passenger ship is at no time more than six miles from a place of refuge where shipwrecked persons can land.

Article 3

1. 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 carrying more than twelve passengers for commercial purposes.
2. Ships flying the flag of a Member State carrying out voyages fully outside the Community are excluded from the scope of application of this Directive.

Article 4

1. When Member States, under the relevant SOLAS provisions, grant exemptions related to the information on passengers to ships flying their own flag arriving at ports inside the Community from ports outside the Community, they may only do so under the conditions laid down for derogations in the provisions of this Directive.
2. Each Member State shall, for passenger ships flying their own flag which depart from a port located outside the Community and bound for a port inside the Community, require the company to ensure that the information under Articles 5.1 and 6 is provided.
3. Each Member State shall, for passenger ships flying a flag of a third country which depart from a port located outside the Community and bound for a port inside the Community, require the company to ensure that the information in accordance with the provisions referred to in Articles 5.1 and 6 of this Directive, is collected and maintained so that it is accessible to the designated authority, when needed.

Article 5

1. All persons on board passenger ships which depart from a port located in a Member State shall be counted prior to departure of the passenger ship.
2. The number of persons shall be communicated prior to departure to the master of the passenger ship as well as to the designated person of the company, or to any other shore based system of the company serving the same purpose.

Article 6

The following information shall be recorded for all passenger ships which depart from a port located in a Member State undertaking voyages of more than 20 miles from the point of departure:

- the names of the persons on board,
- the first name or initial,
- the gender
- an indication about the category of age (adult, child or infant) to which the person belongs.
- when volunteered by a passenger, information as to the need for special care or assistance in emergency situations.

This information shall be communicated not later than 30 minutes after departure of the passenger ship to the designated person of the company.

Article 7

The master shall ensure that the number of persons aboard a passenger ship which departs from a port located in a Member State does not exceed the number for which the passenger ship has been certified.

Article 8

All companies assuming the responsibility for operating a passenger ship referred to in Article 3, shall:

- set up a system for the registration of the information required under the provisions of Articles 5 and 6. The system shall conform with the criteria set out in Article 11,
- appoint a designated person responsible for the keeping and the transmission of the information required by this Directive.

The company shall ensure that information required by this Directive is immediately transmitted to the designated authority or can at all times be made readily available to this authority. The information shall not be kept longer than necessary for the purpose of this Directive and as a general rule shall be deleted as soon as the ship's voyage in question has been safely completed.

The company shall ensure that information on details of persons who have declared a need for special care or assistance in emergency situations, shall be properly recorded and communicated to the master prior to departure of the passenger ship.

Article 9

1. A Member State from whose port a passenger ship departs may lower the 20 mile threshold mentioned in Article 6.
2. A Member State from whose port a ship departs may exempt passenger ships operating in sheltered waters on scheduled services, with a duration less than 30 minutes between port calls, from the obligation to communicate to the designated person of the company as mentioned in Article 5.

A Member State from whose port a ship departs may exempt from the obligations of Article 6 passenger ships operating exclusively in sheltered waters on the condition that adequate and sufficient search and rescue facilities are available in the area in which such ships operate.

A Member State shall not exempt, under the provisions of this Directive, passenger ships sailing from its ports, flying the flag of a third party contracting flag State to SOLAS, which under the relevant SOLAS provisions do not concur to the application of such exemptions.

3. In the circumstances set out in paragraph 2, the following procedure shall apply:
 - a) the Member State shall inform the Commission of the exemption decision without delay giving substantial reasons therefor;
 - b) If the Commission within the period of six months from the notification, considers that the exemption is not justified or could have adverse effects on competition, it may, acting in accordance with the procedure laid down in Article 13, paragraph 2, require the Member State to amend or withdraw the exemption.

Article 10

The registration systems set up in accordance with Article 8 shall be to the satisfaction and approval of the Member States.

Member states shall check at random the proper functioning of the registration systems set up pursuant to this Directive on their territory.

Member States shall designate the authority to whom the information required by this Directive shall be provided by the companies referred to in Article 8.

Article 11

1. Registration systems shall meet the following functional criteria:
 - i) **Readability:** The required data must be in a format that is easy to read.
 - ii) **Accessibility:** The required data must be easily accessible to the authorities for which the information contained in the system is relevant.
 - iii) **Readiness:** The required data must be collected before departure.
 - iv) **Facilitation:** The system must be worked out in such a way that no undue delay is caused for passengers embarking and/or disembarking the vessel.
 - v) **Security:** The data should be appropriately protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access.
 - vi) **Alternative means:** In case of system failure, an alternative mean or equivalent registration system should be available.
2. A multiplicity of systems should be avoided on same or similar routes

Article 12

1. In accordance with the procedure laid down in Article 13, paragraph 2, the following measures may be adopted:
 - a) provisions;
 - i) establishing a harmonised regime of exemptions granted under the provisions of Article 9, paragraph 2;
 - ii) for the implementation of IMO resolutions and circulars related to the registration systems;
 - b) the amendment of the functional criteria mentioned in Article 11, paragraph 1;
 - c) without prejudice to the procedures for amending the SOLAS convention, the amendment of the Directive, to ensure the application for the purpose of this Directive, of subsequent amendments to the SOLAS convention which have entered into force after the adoption of this Directive related to the registration systems.

Article 13

1. The Commission shall be assisted by the Committee set up pursuant to Article 12, paragraph 1 of Directive 93/75/EEC,⁵
2. Where reference is made to this paragraph, the following procedure shall apply:
 - a) The representative of the Commission shall submit to the Committee referred to in paragraph 1 a draft of the measures to be taken;
 - b) The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote;
 - c) The opinion shall be recorded in the minutes; in addition each Member State has the right to have its opinion recorded in the minutes;
 - d) The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 14

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1998 and forthwith inform the Commission thereof. Article 6 shall be applied not later than 1 January 1999.
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.
3. Member States shall lay down the system of sanctions for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those sanctions are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.
4. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

⁵ OJ No. L 247, 5.10. 1993, p. 19 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

Article 15

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

Article 16

This Directive is addressed to the Member States.

Draft
DECISION OF THE EEA JOINT COMMITTEE

N° (..) . ./ 9.
of (..) (.....) 199.

amending Annex XIII (Chapter V) of the Agreement on the European Economic Area by adding Council Directive (.././EC) on the registration of persons sailing on board of passenger ships.

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Directive (.././EC) of the Council of the European Union of (.. 19..), of which a copy is annexed to this Decision, is to be integrated into the Agreement,

Whereas the horizontal adaptation in Protocol 1 and the sectoral and other adaptations in the introduction of Annex XIII to the Agreement shall apply,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XIII, Transport, to the Agreement shall be amended as specified below. The text of the new Act is at Appendix.

Article 2

The following new point shall be inserted in Chapter V after point XXX:

"XXX: Council Directive (.././EC) on the registration of persons sailing on board of passenger ships.

The provision of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

Article 13.1, shall be replaced by the following:

The Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than

(.. 199.)

Article 3

The decision shall enter into force on (.. 199.)

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the Official Journal of the European Communities.

Done at Brussels, (.. 199.)

For the EEA Joint Committee
The President

.....

The Secretaries
to the EEA Joint Committee

.....

FINANCIAL STATEMENT

1. Title of operation

Proposal for a Council Directive on the registration of persons sailing on board of passenger ships.

2. Budget heading involved

Part A (see § 10)

3. Legal basis

Achievements of Safety on Maritime Transport: Article 84 (2) of the Treaty linked with Article 75 (1) (c)

4. Description of operation
 - 4.1. General Objective

The establishment of common and harmonized procedures related to registration of persons sailing on board of passenger ships

 - 4.2. Period covered and arrangements for renewal

Indefinite

5. Classification of expenditure of revenue
 - 5.1. Non-compulsory expenditure

 - 5.2. Non-differentiated appropriations

6. Type of expenditure or revenue

Administrative expenses

7. Financial impact on Part B (Operational Appropriations)

None

8. Fraud prevention measures

Application of the procedures for inviting Member States' experts

9. Elements of cost-effectiveness analysis

9.1. Specific and quantified objectives; target population

Establishment of a harmonized regime to ensure that all passenger ships sailing to and from European ports do not carry more passengers than authorised according to the relevant safety certificates. Furthermore, requiring information on passengers on board passenger ships, in order to enhance effectiveness of emergency services in the aftermath of an accident.

9.2. Monitoring and evaluation of the operation

Monitoring and evaluation of the operation will be done by the yearly meeting of the Committee of Maritime Safety.

10 Administrative expenditure (Section III, Part A of the budget)

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

10.1 Effect on the number of posts

		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A B C	2		2		
Other resources		XXXXXX				
Total		2		2		

If additional resources are required, indicate the pace at which they will have to be made available.

10.2. Overall financial impact of additional human resources

ECU

	Amounts	Method of calculation
Officials	0	
Temporary staff	0	
Other resources (indicate budget heading)	0	
	0	
Total	0	

The amounts given must express the total cost of additional posts for the entire duration of the operation, if this duration is predetermined, or for 12 months if it is indefinite.

10.3 Increase in other administrative expenditure as a result of the operation

ECU

	Amounts	Method of calculation
A 2510	20.000,-	The Committee of Maritime Safety is already meeting for issues related to other EC Directives dealing with maritime safety. One additional 1 - day meeting/year is valued necessary to discuss particular issues related to this proposal (travel expenses valued at about 20.000 ECU).
Total	20.000,-	

Impact assessment form

The impact of the proposal on business

Title of Proposal :

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE REGISTRATION OF PERSONS SAILING ON BOARD OF PASSENGER SHIPS

Reference number : COM 96()

The Proposal

1. *Taking into account the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The obligations of the Community in this context are the improvement of safety in maritime transport as foreseen in Article 84 (2) of the Treaty read in conjunction with Article 75 (1) (c). The objective of the action proposed is the establishment of a harmonized set of safety standards for all passenger ships operating in waters for which Member States bear responsibility under the 1979 International Convention on Maritime Search and Rescue.

Referring to the principle of subsidiarity, it will be the responsibility of the Community to ensure a framework of rules providing a harmonized level of safety for passenger ships operating in the same area. The responsibility of the Member States is to adopt within their own national legislation measures designed to ensure an effective application of the Directive.

The impact on business

2. *Who will be affected by the proposal*
 - which sector of business ?
 - what sizes of business ?
 - are there particular geographical areas of the Community where these businesses are found ?

The business sector which will be affected by this proposal are entities operating passenger ships to and from Community ports. A vast majority of passenger ships sailing in Community waters are operated by medium-sized and large enterprises. The largest fleets of passenger ships affected by the provisions of the Directive are operated to, from and within Greece, Italy, Denmark, Sweden, Finland and across the English Channel.

3. *What will businesses have to do to comply with the proposal ?*

Member States shall bring into force the laws, regulations and administrative procedures so that operators of passenger ships comply with the safety standards related to counting of passengers as from 1 January 1998, and registration of further details as from 1 January 1999. The operators of passenger ships have to be prepared to establish operative registration systems with sufficient back-up capacities prior to these deadlines. It is notable that similar requirements are already in force and operative in some Member States, thus sufficient techniques are already available and new registration systems do not have to be explicitly developed.

4. *What economic effects is the proposal likely to have ?*

Whereas no or limited impact on employment is expected with regard to the activities on board a passenger ship, the introduction of passenger registration procedures may have an effect of needing more staff to deal with the registration procedures ashore, prior to the departure of a passenger ship. Moreover, the proposal is likely to have a substantial and beneficial impact on the competitive position of business. By establishing a harmonized safety regime for all passenger ships, including those flying a non-community flag, operating in Community waters, a level playing field will be created for all operators involved, minimizing the risks for distortion of competition by operators trying to gain a competitive edge by economising on the safety standard.

5. *Does the proposal contain measures to take into account of the specific situation of small and medium sized firms (reduced or different requirements) ?*

Fulfilling the regulations of the proposal does not contain any requirements that may constitute insurmountable financial burdens for the involved enterprises.

Consultation

6. Representatives from European shipowners and unions have been consulted on the proposal. The industry expressed mainly its concern about a possible less favourable competition on journeys less than 30 miles, due to the registration obligation. Competition with the shuttle was also addressed.

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