



Council of the
European Union

Brussels, 13 December 2016
(OR. en)

15533/16

Interinstitutional File:
2016/0171 (COD)

MAR 306
DATAPROTECT 109
CODEC 1890

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	9964/16 MAR 161 CODEC 847
Subject:	Proposal 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 – Comments from the European Data Protection Supervisor

Delegations will find attached a letter and formal comments received from the European Data Protection Supervisor (EDPS) on the above-mentioned proposal.



EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI
ASSISTANT SUPERVISOR

President of the Council of the European
Union
General Secretariat
Council of the European Union
Rue de la Loi 175
B-1048 Brussels

Brussels, 09 December 2016
WRW/ZB/ssp(2016)2661 C2016-0307
Please use edps@edps.europa.eu for all
correspondence

Subject: Formal comments of the EDPS on the Proposal 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

Dear Mr President,

Having regard to 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, and in particular its Article 28(2), we send you our formal comments on the revision of passenger ship safety regulatory framework with regard to the registration of passengers and crew on board¹.

We have sent our formal comments to the European Commission and the European Parliament as well.

Yours sincerely,

Wojciech Rafał WIEWIÓROWSKI

¹ COM(2016) 370 final.

Annex: Formal comments

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General
Mr Peter JAVORČÍK, Permanent Representative of Slovakia
Mr Ralph KAESSNER, Secretariat General of the Council

Contact person: Ms Zsuzsanna BELENYESSY, Case officer (Tel: 02-283 19 00)



EDPS formal comments on the revision of passenger ship safety regulatory framework with regard to the registration of passengers and crew on board

1. Introduction and background

On 6 June 2016 the Commission adopted a Proposal for a Directive of the European Parliament and of the Council amending Council Directive 98/41/EC¹ 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/EU² of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States³ (the 'Proposal').

The Proposal was sent to the EDPS for information and eventual comments on 6 June 2016. The EDPS had also been consulted informally before the publication of the Proposal.

The Proposal aims at simplifying the existing regulatory framework for passenger ship safety and bringing it up to date with legal and technical developments.

As far as the protection of personal data is concerned, the relevant parts of the Proposal concern the obligation to count and register passengers and crew on board. The mechanism of counting and registering information on persons on board is intended to ensure that the maximum authorised number of persons on board is not exceeded and also facilitates effective search and rescue operations.

Under the existing regulatory framework, ship operators already have to record how many people are on board of ships, as well as their names, ages and gender, based on self-declaration of passengers. According to current requirements, the information has to be stored in the company's system, which is collecting the data, and at all times, be readily available for transmission to the competent authorities responsible for search and rescue. The proposed rules would add nationality to the categories of data collected, and would require the registration of all data into an already existing, common electronic database (the so-called 'National Single Window'). The objective of this change is to make it easier to access data about the persons on board of a ship in case of an emergency. The proposed rules also specify retention periods (when journey safely ends or if an accident occurs, when judicial proceedings end).

The EDPS welcomes the fact that recommendations made previously have been considered, which contributes to the quality of the Proposal. In these comments, the EDPS provides further recommendations on the final text of the Proposal. Our comments are limited to Article 1 of the Proposal, which amends Directive 98/41/EC (the 'revised Directive').⁴

¹ 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. 35–39.

² 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. 1–10.

³ COM(2016) 370 final.

⁴ Unless otherwise specified, references to Articles in these comments will mean references to Articles of the revised Directive as set forth in the Proposal.

2. Recommendations

2.1. Purpose limitation and deletion of personal data no longer needed

The EDPS welcomes the fact that Article 5(3) specifies that *'personal data collected for the purposes of this Directive should not be processed and used for any other purpose'* and that Article 8 specifies that *'without prejudice to other reporting obligations, once the information is no longer needed for this purpose, it shall be destroyed'*.

With regard to Article 8, in order to ensure legal certainty, the EDPS further recommends that the phrase *'without prejudice to other reporting obligations'* be either deleted or specified, via including a specific reference to these other reporting obligations. If this is not possible, at a minimum, we recommend replacing *'other reporting obligations'* with *'other specific reporting obligations required by law including for statistical purposes'*, or possibly with *'other specific requirements under Union or Member State law'* or similar.

In addition, in order to further improve the clarity of legislation, the EDPS recommends that the following be added after the phrase *'for the purposes of this Directive'* in Article 5(3): *'(in particular, passenger safety and facilitating search and rescue operations)'*.

In any event, it should be clear from the Proposal that, without an appropriate, specific legal basis, the personal data collected should not be used either for commercial purposes (for example, advertising) or as a new resource for law enforcement or border control purposes (e.g. to control illegal immigration).

2.2. Conservation periods and deletion of personal data no longer needed

The EDPS welcomes the fact that Article 10 provides that personal data collected *'shall not be kept by Member States longer than necessary for the purpose of this Directive, that is: (a) until the moment the ship's voyage in question has been safely completed; or (b) in the event of emergency or in the aftermath of an accident, until the possible investigation or judiciary proceedings have been completed.'*

This specific provision on data retention, contributes to legal certainty by defining applicable retention periods, while allowing some flexibility in case an accident happens. Maintaining this provision is essential to ensure compliance of the Proposal with data protection principles.

Brussels, 09 December 2016



Wojciech Rafał WIEWIÓROWSKI