



Council of the
European Union

Brussels, 17 January 2018
(OR. en)

5437/18

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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	9 January 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 9017 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 9.1.2018 supplementing Directive 2014/90/EU of the European Parliament and of the Council as regards the identification of specific items of marine equipment which can benefit from electronic tagging

Delegations will find attached document C(2017) 9017 final.

Encl.: C(2017) 9017 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 9.1.2018

supplementing Directive 2014/90/EU of the European Parliament and of the Council as regards the identification of specific items of marine equipment which can benefit from electronic tagging

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC (hereafter called ‘the Marine Equipment Directive’) provides that "The Commission shall carry out a cost-benefit analysis concerning the use of the electronic tag as a supplement to, or a replacement of, the wheel mark." This analysis was undertaken by means of a study which is now available on the Commission website¹.

It found that the time window to agree on a broadly accepted and recognized standard for electronic tags supplementing or replacing the wheel mark is relatively short as industry has already started applying such technology. The study concluded that while the maritime industry operates in a complex environment which makes it difficult to envisage all future possible uses of electronic tagging, the following positive impacts are to be expected from the timely introduction of a (voluntary applicable) EU framework:

- Manufacturers should benefit from an improved prevention of counterfeiting;
- Ship owners/operators should be able to carry out equipment traceability and stock control more easily;
- Market surveillance authorities should benefit from direct and easy access to the relevant data bases, which will improve the validation checks of certificates.

For different phases of the marine equipment (approval, market access and surveillance) and ship life cycle (construction, operation and recycling) the processes taking place were analysed and possible challenges identified. Scenario projections considered the situation in 10 years after the possible implementation of electronic tags.

The technological section of the study gave a comprehensive overview of existing data carriers and data exchange architectures, resulting in the recommendation to use radio-frequency identification (RFID) and data matrix labelling as favoured technologies for electronic tagging.

For the quantitative assessment three different implementation scenarios have been defined and evaluated in addition to the baseline, leading to the conclusion that the most expensive scenario also has the highest potential benefits.

The implementation scenarios have been assessed against four main costs categories: investment, implementation, operational (including training) and maintenance costs. Faster data acquisition, reduction of market damage, more focussed product recalls and a more effective identification of counterfeited products have been evaluated on the benefits side.

While the baseline scenario relates to the continuation of the status quo without electronic tagging, scenario 1 is based on using the Marine equipment certificate number for the identification only. Scenario 2 makes use of a company and item code on the product in addition to the marine equipment certificate number, and scenario three goes further by adding information which allows the individual identification of every single product of a manufacturer.

The evaluation of the costs has been drawn by estimating the cost *per* stakeholder (*i.e.* manufacturer and market surveillance) and *per* unit needed for the implementation; items

¹ <https://ec.europa.eu/transport/sites/transport/files/2017-04-electronic-tag-marine-equipment.pdf>

such as tag printers, readers, software interfaces, training have been considered. The cost and benefits have been evaluated over a period of 5 years for the purpose of depreciation and as this is considered sufficient for the voluntary uptake of the measure.

While there is no additional cost for the baseline scenario there are also no additional benefits. The overall additional costs for scenario 1 are estimated (over 5 years) to be €710,000 and the benefits €28.7 million, while for scenario 3 €89 million additional costs (over 5 years) are expected to lead to increased benefits of almost €150 million. The intermediate scenario 2 foresees costs of €5.5 million and benefits of €32.7 million.

It should also be noted that the legislator did not foresee to make the introduction of electronic tagging mandatory, leaving the decision whether to make use of its advantages to economic operators.

Since it will be up to the economic operators to take up electronic tagging voluntarily, they will also be able to determine whether they want to invest more in the technology in order to achieve the increased benefits.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Stakeholders were consulted in the framework of both an impact assessment on the revision of Marine Equipment Directive in 2012 and of the cost-benefit analysis carried out in 2017 on options for electronic tagging.

The impact assessment for the Marine Equipment Directive of 2012² took into consideration the introduction of electronic tags on a voluntary basis in the policy packages assessed. The present initiative is hence part of the policy choice already taken at the time of the adoption of the Directive.

In this vein, Article 11 of the Marine Equipment Directive asks the Commission to carry out a cost-benefit analysis. The analysis looked into the various options for implementing electronic tags. It is available on the Commission website.

Consultations for the cost-benefit analysis involved all relevant stakeholders with regard to the Marine Equipment Directive, namely Member States (i.e. the Marine Equipment Expert Group [E02653], other relevant stakeholders, its sub-group on market surveillance, ADCO MED, as well as the Committee on Safe Seas [COSS, C09400]), Notified Bodies, marine equipment manufacturers, flag state and port state control officers, market surveillance authorities and ship operators. Stakeholders were made aware of the consultation through the MarED website, where more than 10.000 interested individuals are registered. Three stakeholder workshops and two practical demonstrations, one at a major sectorial trade fair and one on a ferry in the Baltic Sea completed the consultation. The general public will be consulted through the forthcoming standard 4-week public consultation on Delegated/Implementing Acts.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act lists marine equipment falling within the scope of Directive 2014/90/EU which will be able to benefit from electronic tagging.

As the consultations with stakeholders showed that by using different ways of tagging it could be technically feasible to tag all varieties of marine equipment, all types of equipment placed or to be placed on board an EU ship and for which the approval of the flag State

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0438&from=en>

administration is required by the international instruments defined in in Article 2 of Directive 2014/90/EU are technically feasible to apply electronic tagging.

For example, in addition to tagging the packaging, it should be possible to attach a tag onto a wall on a ship which has been painted with a paint approved in accordance with the Marine Equipment Directive, showing that the paint is in conformity with Marine Equipment Directive requirements. Therefore, this act should not exclude specific items of marine equipment from its scope.

By adopting a Regulation, the objectives of the Marine Equipment Directive, which rely on the prevention of counterfeiting and efficient market surveillance, will be achieved uniformly throughout the Member States, offering legal certainty for all stakeholders, including marine equipment manufacturers, competent authorities and ship builders and operators. The form of a Regulation ensures a coherent framework for all market operators and is the best possible guarantee for a level playing field and uniform conditions of competition. Furthermore it ensures the direct applicability of the list of specific marine equipment which can benefit from electronic tagging. The recourse to a regulation allows, in addition, to avoid administrative burden for Member State administrations as it requires no further transposition at national level.

COMMISSION DELEGATED REGULATION (EU) .../...

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC³, and in particular Article 11(3) thereof,

Whereas:

- (1) In order to enable the voluntary use of electronic tags by economic operators, to facilitate market surveillance and to prevent the counterfeiting of specific items of marine equipment, Directive 2014/90/EU confers powers to the Commission to adopt delegated acts in order to identify specific items of marine equipment which can benefit from electronic tagging.
- (2) It is important to ensure that the objectives of Directive 2014/90/EU are achieved uniformly throughout the Member States. This is achieved by adopting a Regulation, offering legal certainty for all stakeholders, including marine equipment manufacturers, competent authorities and ship builders and operators. The form of a Regulation ensures a coherent framework for all market operators and is the best possible guarantee for a level playing field and uniform conditions of competition. Furthermore it ensures the direct applicability of the list of specific marine equipment which can benefit from electronic tagging. The recourse to a regulation allows, in addition, to avoid administrative burden for Member State administrations as it requires no further transposition at national level.
- (3) In accordance with Directive 2014/90/EU the Commission should carry out a cost-benefit analysis concerning the use of electronic tags as a supplement to or a replacement of the wheel mark.
- (4) The cost-benefit analysis demonstrated that, due to the electronic tagging of marine equipment, manufacturers should benefit from an improved prevention of counterfeiting, ship owners and operators should be able to carry out equipment traceability and stock control more easily and market surveillance authorities should benefit from direct and easy access to the relevant data bases, which will improve the validation checks of certificates.
- (5) The cost-benefit analysis concluded that overall investments will be low compared to the expected benefits and that costs for authorities and industry are affordable because

³ OJ L 257, 28.8.2014, p. 146.

of a possible stepwise voluntary implementation. Through further investments by the private and public sector additional benefits can be realised.

- (6) Within the context of the cost-benefit analysis the Commission carried out several consultations, workshops and demonstration projects with Member State's experts and stakeholders.
- (7) During those consultations stakeholders agreed that it could be technically feasible to tag equipment placed or to be placed on board an EU ship and for which the approval of the flag State administration is required by the international instruments defined in Article 2 of Directive 2014/90/EU by using different methods of tagging. Therefore such equipment should be able to benefit from electronic tagging.

HAS ADOPTED THIS REGULATION:

Article 1

The specific items of marine equipment listed in the Annex of this Regulation may benefit from electronic tagging.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9.1.2018

For the Commission
The President
Jean-Claude JUNCKER