Technical Regulation no. 8 of 15 December 1998 on the counting and registration of the persons on board passenger ships

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Translation: Only the Danish version is authentic

Technical Regulation no. 8 of 15 December 1998

Technical Regulation on the counting and registration of the persons on board passenger ships *)

Pursuant to § 6, § 11, subsection 2 and § 14, subsection 2 and § 28 of the Safety of Ships, etc. Act, cf. Consolidation Act No. 594 of 26 June 1996, latest amended by Act No. 311 of 3 June 1998 and by Order No. 694 of 17 August 1995 is laid down:

*) This Technical Regulation contains provisions, which implement Council Directive no.98/41 /EEC, EEC Journal 1998 L 188, p. 35

§ 1. This Technical Regulation applies to passenger ships with the following exceptions:

1) Ships of war and troop ships.

2) Pleasure yachts unless they are, or will be crewed and carry more than twelve passengers for commercial purposes.

§ 2. For the purpose of this Technical Regulation:

1) "Persons": All persons on board irrespective of age.

2) "Passenger ship": A seagoing ship or a seagoing high-speed craft, which carries more than twelve passengers.

3) "High-speed craft": A high-speed craft as defined in regulation 1 of Chapter X of the 1974 SOLAS Convention, as in force at the time of the adoption of this Directive.

4) "Company": The owner of a passenger ship or 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.

5) "ISM Code": The International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization (IN40) through Assembly Resolution A.741(18) of 4 November 1993.

6) "Passenger Registrar": The responsible shore-based person designated by a company to fulfil the ISM Code obligations, or a shore-based person designated by a company as responsible for the keeping of information on

persons who have embarked on a company passenger ship.

7) "Designated Authority": The competent authority of the Member State responsible for search and rescue, or concerned with the aftermath of an accident.

8) "A mile": 1.852 metres.

9) "Protected Sea Area": 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 shipwrecked can land, and in which the proximity of search and rescue facilities services is ensured.

10) "Regular Service": A series of ship crossings operated so as to serve traffic between the same two or more ports, either:

a) according to a published timetable, or

b) with crossings so regular or frequent that they constitute a recognizable systematic series.

11) "Third Country": Any country, which is not a Member State.

§ 3. All persons on board Danish passenger ships, regardless of where the ships are, and persons on board foreign passenger ships departing from a Danish port, shall be counted before the ship departs.

Subsection 2. Before the passenger ship departs from port the number of persons on board shall be communicated to the master of the passenger ship, and to the company's passenger registrar and to a shore-based company system, which performs the same function.

§ 4. The following information shall be recorded for all passenger ships departing from ports in the EEC Member States to undertake a voyage of more than twenty miles from the point of departure:

1) The family names of the persons on board.

2) Their forenames and initials.

3) Their sex.

4) An indication of the category of age (adult, child or infant) to which each person belongs, or the age or year of birth.

5) When volunteered by a passenger information concerning the need for special care or assistance in emergency situations.

Subsection 2. That information shall be collected before departure and communicated not later than thirty minutes after the passenger ship's departure to the company's passenger registrar or to a shore-based company system that performs the same function.

Subsection 3. Passenger ships engaged in international voyages and because of the duration of the voyage, solely are covered by the requirement of counting the persons on board, cf. §3, however, not the registration of names etc. prescribed in § 4, subsection 1 and 2, are still covered by the requirements of the SOLAS Convention on information on the passengers. Derogations from the requirements of SOLAS shall only be accepted provided the ship has been granted exemption here from by the Administration, and that the ship has a Certificate of Exemption to document this.

§ 5. Companies the passenger ships of which fly Danish flag shall ensure that the information in § 3, subsection 1 and § 4, subsection 1, is looked out as stipulated in respectively § 3, subsection 2, and § 4, subsection 2, when the ships depart a port outside the Community to sail to a port in the Community.

Subsection 2. Each Member State shall, as regards every passenger ship that flies the flag of a third country and departs from a port located outwith the Community and is bound for a port located within the community, require the company to ensure that the information specified in § 3, subsection 1, and § 4, subsection 1, is collected and maintained so that it is available to the designated authority when needed for the purposes of search and rescue and in the aftermath of an accident.

§ 6. Before a passenger ship departs a port located in a Member State its master shall ensure that the number of persons on board does not exceed the number the passenger ship is permitted to carry.

§ 7. Companies operating passenger ships shall, where required in §§ 3 and 4:

1) Set up a system for the registration of passenger information. The system shall meet the criteria laid down in § 10.

2) Appoint a passenger registrar responsible for the keeping and transmission of that information should an emergency occur, or in the aftermath of an accident.

Subsection 2. The company shall ensure that the information required by this Technical regulation is at all times available for transmission to the designated authority for search and rescue purposes in the event of an emergency, or in the aftermath of an accident. By a marine casualty that may arise, information on the number of persons on board shall be transmitted to The Danish Navy Operative Command on the purposes of the search and rescue efforts. A list with the names etc. of the persons on board shall be delivered to the chief constable of the police district being responsible for the police efforts in connection with the marine casualty.

Subsection 3. Personal data collected in compliance with the provisions in § 4 shall not be kept longer than necessary for the purposes of this Technical regulation.

Subsection 4. The company shall ensure that information concerning persons who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.

§ 8. A Member State from a port in which a ship departs may exempt passenger ships operating, exclusively in protected sea areas, regular services of less than one hour between calling ports from the obligation laid down in § 4, subsection 2, to. Communicate the number of persons on board to the passenger registrar or to a shore-based company system that performs the same function.

Subsection 2. A Member State may exempt passenger ships sailing, exclusively in protected sea areas, between two ports or from and to the same port without intermediate calls from the obligations laid down in § 4.

Subsection 3. In the circumstances set out in subsection 2, the following procedure shall apply:

a) The Member State shall without delay inform the Commission of its decision to grant an exemption or a derogation from the relevant provisions of in §§ 3 and 4 giving substantive reason therefore.

b) If within six months of such notification the Commission considers that the decision is not justified, or could have adverse effects on the competition, it may, acting in accordance with the procedure laid down in Article 13 in Directive 98/41/EEC require the Member State to amend or withdraw the decision.

Subsection 4. A Member State from which port passenger ships operate in domestic waters, or two Member States between the ports of which passenger ships operate, it may for regular service in an area where the probability of the significant wave height's exceeding two metres is less than 10%, measured annually, and

1) if the voyage does not exceed about 30 miles from the point of departure, or

2) where the primary purpose of the service is to provide regular links to outlying communities for customary purposes,

May request the Commission, if they consider it impracticable for the companies to record the information specified in § 4, subsection 1, to derogate, wholly or partly, from this requirement.

Subsection 5. To this end evidence of such impracticability shall be provided. In addition it shall be demonstrated that in the area, where such ships operate, shore-based navigational guidance and reliable weather forecasts are provided, and that adequate and sufficient search and rescue facilities are available. Derogations granted under this paragraph may not have any adverse effect on competition.

Subsection 6. A Member State shall not, under the provisions of Directive 98/41/EEC exempt or grant derogation to passenger ships sailing from its ports and flying the flag of a third country, which is a contracting party to the SOLAS Convention, if the country does not agree to the derogation according to the SOLAS requirements.

§ 9. Registration systems set up in accordance with § 7 shall be approved by the Danish Maritime Authority. The Danish Maritime Authority carries out random checks on the functioning of the registration systems set up on Danish territory in

accordance with this Directive.

§ 10. With a view to this Technical regulation the registration systems shall comply with the following functional criteria:

1) *Readability:* The required data shall be of an easily read format.

2) *Availability:* The required data shall be easily available to the designated authorities to which the data of the system is relevant.

3) *Applicability:* The system shall be so designed that no undue delay is caused for the passengers in connection with embarking and/or disembarking.

4) *Security:* The data shall be sufficiently protected against accidental or unlawful destruction or loss and against unauthorized alteration, distribution and access.

Subsection 2. Multiplicity of systems on the same or similar routes is to be avoided.

§ 11. Any one who contravenes the provisions of §§ 3-7 shall be punished with a fine, simple detention or imprisonment for a term not exceeding one year.

Subsection 2. The penalty may be increased to simple detention or imprisonment for a term not exceeding two years, where the contravention has been committed by an intentional or negligent act.

Subsection 3. By meting out the penalty according to subsection 1 and 2 it shall be considered an increase of the sentence that

1) the violation has resulted in health damage or constituted danger hereof,

2) that an injunction earlier has been given in pursuance of the Safety of Ships, etc. Act for the same or similar offence, or

3) the violation has produced or been intended to produce financial benefits to the contravener or others.

Subsection 4. It shall be considered a further increase of the sentence that the violation has resulted in health damage to young persons of less than 18 years of age or constituted danger hereof, cf. subsection 3, no. 1.

Subsection 5. If the benefits obtained by the violation are not confiscated, it shall by meting out the fine, hereunder additional fine, be taken into special consideration the size of an obtained or intentional economic benefit.

Subsection 6. Liability to punishment shall be imposed on companies etc. (juristic persons) according to the regulations of Chapter 5 of the Criminal Code.

§ 12. The Technical regulation enters into force 1 January 1999. With regard to ships, not engaged in domestic voyages*) the provisions in § 4 are though at the earliest applicable from 1 January 2000.

Subsection 2. Technical regulation no. 3 of 4 May 1990 on counting and

registration of persons on board is revoked.

*) Passenger ships engaged in international voyages are covered by "Notice from the Danish Maritime Authority W, Chapter Ill, regulation 27, which requires registration of names etc. from 1 January 1999.

§ 13. This Technical regulation does not apply to Faroese or Greenlandic passenger ships, unless they call Danish port.

The Danish Maritime Authority, 15 December 1998

Christian Breinholt

/Peter Lauridsen

Remarks to Technical Regulation on the counting and registration of persons on board in passenger ships

The purpose of this Technical regulation is to enhance the safety and the possibilities of rescue of the passengers and crew on board passenger ships in order that the search and rescue operations can be carried out and the aftermath of accidents can be handled more effectively.

Counting of the persons on board is necessary to ensure that the number of passengers on board does not exceed the number of which the ship and its safety equipment are approved. In addition the search and rescue services need to know the number of persons on board, when the ship is involved in an accident.

Information on the names of the passengers and crew will contribute to mitigate the aftermath of an accident, i.e. identification of the involved, a higher level of clarification of legal questions in connection with the accident, and performance of a more expedient medical aid to the rescued. Such information will furthermore prevent unnecessary anxiety among relatives and other next of kin to the persons on board a passenger ship befallen by an accident.

By a marine casualty that may arise however, only by a marine casualty that may arise information on the number of persons on board shall be submitted to The Danish Navy Operative Command with a view to the rescue efforts. The list of the names etc. of the persons on board shall be delivered to the chief constable of the police district being responsible for the police efforts in connection with the marine casualty.

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