Sjøfartsdirektoratet
Norwegian Maritime Authority

Circular - Series R

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Reference to: Regulations of 6 September 1999 No. 1047 on the counting and registration of persons on board passenger ships

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Amendments to Regulations on the counting and registration of persons on board passenger ships

Today, the Norwegian Maritime Authority (NMA) has adopted amendments to the Regulations of 6 September 1999 No. 1047 on the counting and registration of persons on board passenger ships. These amendments enter into force immediately.

The proposed amendments were circulated for review on 6 July 2022 and the deadline for comments was 6 October. Nine consultative bodies submitted comments (see the attached consultation matrix, which is only available in Norwegian).

The Regulations of 6 September 1999 No. 1047 on the counting and registration of persons on board passenger ships implements amendments that will come based on Directive (EU) 2017/2109 which amends Directive (EC) 98/41. It is decided that Directive (EU) 2017/2109 will be incorporated in the EEA agreement, and the amendments to the Regulations on the counting and registration of persons on board passenger ships are required as a consequence.

Overview of the amendments

The scope of Directive (EU) 2017/2109 has been harmonised with Directive 2009/45, as amended[1], in that the Directive applies to ships operating in sea areas A to D, while ships engaged exclusively in domestic voyages within "port areas" are exempt, in accordance with article 3.1 and the definition of «port area» set out in article 2 of Directive (EU) 2017/2109. "Port area" means ships in trade area 2 or smaller trade areas. This is in line with the interpretation of the existing Directive (EC) 98/41 and the Regulations on the counting and registration of persons on board passenger ships. Passenger ships engaged in international voyages to/from EU ports are also included in the Directive, cf. article 2, cf. article 3 which do not limit the definition of passenger ships and the scope of action of ships engaged in international voyages.

[1] Regulations of 28 March 2000 No. 305 on surveys, construction and equipment of passenger ships engaged on domestic voyages and RSR 13-2021

Pursuant to Directive (EU) 2017/2109, shipping companies operating passenger ships engaged in voyages of more than 20 nautical miles from the point of departure must record the name, nationality, gender and date of birth of each person on board. Today, companies can choose to report «age category (adult, child or infant), age or year of birth»[2]. Furthermore, Directive (EU) 2017/2109 states that this information needs to be collected no later than 15 minutes after departure, and not 30 minutes as is stated in the current section 6 of the Regulations on the counting and registration of persons on board passenger ships. We have received consultative comments saying that the collection deadline should still be 30 minutes. Here, however, there is no scope of action for the NMA since Directive (EU) 2017/2109 article 5 clearly states that the collection of personal data needs to be done no later than 15 minutes after departure.

Directive (EU) 2017/2109 also changes the required procedure for reporting number of passengers from the current requirement to report to the company's shore-based organisation to a requirement for electronic reporting using the national reporting portal[3] pursuant to Directive (EU) 2010/65 on reporting formalities.

Following a comment from the Norwegian Coastal Administration, the references in the adopted Regulations are changed from "national reporting portal" to "SafeSeaNet Norway" where the reporting should be done in a national reporting portal in Norway.

To meet challenges for ships that neither are able to log on to the national reporting portal or have AIS installed on board, the member States may allow reporting within a company organisation for a transitional period until 20 December 2023.

The handling of personal data in accordance with Directive (EU) 2017/2109 must be done pursuant to GDPR[4].

Comments to the individual amended sections

Section 2 Definitions

Directive (EU) 2017/2109 amends the definitions. Existing subsections a and b are deleted in section 2. Furthermore, a definition of "high-speed craft" and "passenger registrar" is included[5].

As far as the definition of high-speed craft in Directives (EU) 98/41 and 2017/2109 is concerned, the definition in the Directive is the same as in SOLAS and in the Regulations of 5 January 1998 No. 6 on the construction, equipment and operation of high-speed craft used as passenger craft or cargo craft, for ships engaged in international voyages.

The term "passenger registrar" is the same term that is used in the official Swedish translation of Directive (EU) 2017/2109. Amendments have also been done to the definition of "regular service" which now states that "regular service" also includes a series of voyages from and to the same port without intermediate calls.

[2] Regulations of 6 September 1999 No. 1048 on the counting and registration of persons on board passenger ships section 6

[3] The portal SafeSeaNet Norway is a national reporting portal where the shipping industry may request a pilot and send mandatory arrival and departure information to Norwegian authorities and ports. More information: https://www.kystverket.no/sjotransport-og-havn/safeseanet-norway/

[4] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

[5] In the draft, "port area" was also defined. This term is not used in the Regulations and is deleted in the adopted Regulations.

In the existing Regulations, it has been assumed that the Directive does not apply to trade area 2 and smaller trade areas. This is in line with Directive (EU) 2017/2109, where the term “port area” is used to describe the area we refer to as trade area 2 and smaller trade areas.

The Regulations on the counting and registration of persons on board passenger ships apply to Norwegian passenger ships, which according to their certificate can carry more than 12 passengers and are operating to or from ports within the European Economic Area (EEA). The legal basis fir the Regulations is the Ship Safety and Security Act which states, in section 2 first paragraph, that the Act does not apply to ships of less than 24 metres in overall length used for non-commercial purposes. Also, the preparatory work for the Ship Safety and Security Act states[6] that it is the actual use of the vessel that determines which rules that apply. Vessels that are not used in commercial traffic are not included in the rules for passenger ships. That means that all recreational craft are excluded from the Regulations.

Section 4 Registration

Section 4 first paragraph states the company shall appoint a "passenger registrar" responsible of communicating information specified in sections 5 and 6 to the national reporting portal.

The existing second paragraph is repealed since the responsibility for reporting in emergency situations, or after an accident will be laid on public authorities, cf. Directive (EU) 2017/2109 article 10.2.

The new second paragraph states that the company shall have procedures for ensuring that accurate information is recorded in a timely manner in SafeSeaNet Norway.

The third paragraph states that the the information shall be collected and registered without causing undue delays to the passengers embarking or disembarking.

According to the new fourth paragraph the system for collecting information shall be the same on the same or similar routes, cf. equivalent rule in the existing fourth paragraph which says “should”.

Section 5 Counting

The first paragraph now specifies that the counting requirement in the first paragraph applies to all ships departing from a Norwegian port. For Norwegian passenger ships departing from ports outside the EEA to call at an EEA port, the counting requirement is found in SOLAS III regulation 27 which has been made applicable by the Regulations of 1 July 2014 No. 1019 on life-saving appliances on ships. SOLAS III/27 has also been made applicable for Norwegian and foreign ships by the Regulations of 7 June 2019 No. 710 on the construction, equipment and operation of passenger ships in the Norwegian territorial waters surrounding Svalbard. The same applies to Norwegian high-speed craft operating in or between third countries, cf. the Regulations of 5 January 1998 No. 6 on the construction, equipment and operation of high-speed craft used as passenger craft or cargo craft or the International Code of Safety for High-Speed Craft, 2000 18.2.5.

In accordance with the Directive, the second paragraph states that the number of persons on board must be communicated to SafeSeaNet Norway, and not to the shipping company. There is also an editorial change where “master” has become
“ship’s master”.

The existing section 5 second paragraph third sentence is deleted, and the edited content is moved to a new third paragraph.

[6] NOU 2005:14 På rett kjøl

Section 6 Registration

The first paragraph is updated to correspond with the Directive by the inclusion of a requirement to report first name, nationality and date of birth. In the existing Regulations it is possible to register initials and age, age category or year of birth. It is also specified that the requirement applies to ships departing from a Norwegian port. Furthermore, it is specified in the third paragraph that the information mentioned in the first and second paragraphs must be communicated via the national reporting portal no later than 15 minutes after departure, as opposed to the current requirement of no later than 30 minutes after departure, cf. article 5 item 2 of the Directive. The stricter reporting deadline is a consequence of the technological development, see item 12 in the introduction of the Directive.

Section 6a Registration and reporting outside the European Economic Area

This is an implementation of Directive 98/41 Article 6 items 1 and 2. This is to ensure that Norwegian ships calling at ports within the EEA comply with the conditions of the Directive. The second paragraph is to ensure that ships flying the flag of a non-EEA member State must comply with the same conditions as EEA ships when calling at Norwegian ports.

Section 7 Keeping of recorded information

Directive (EU) 2017/2109 refers to GDPR and there is now a requirement for data not to be retained longer than necessary. The wording is changed correspondingly, meaning that data collected pursuant to the provisions of sections 5, 6 and 6a must only be used according to the purpose and not be kept longer than necessary. The data must be erased automatically and without undue delay once the voyage has been safely completed.

Section 8 Exemptions

The headline of section 8 in the Norwegian version is changed from «fravik» to «dispensasjon» in accordance with the terminology commonly used in more recent regulations.

In the first paragraph the wording and terms for exemptions is changed to correspond with the changes to Directive (EU) 2017/2109. Exemption may be granted to a passenger ship engaged on a regular service, departing from a Norwegian port, operating

exclusively in sea area D or lesser sea area[7], where the duration of the voyage between ports is less than 60 minutes, and where the proximity of search and rescue facilities is ensured in the area. An operation exclusively within the geographical sea area D or lesser sea area is the condition here. That means that passenger ships certified for trade area 3 may meet the requirements for exemption if they exclusively operate in the geographical area for sea area D or lesser sea area. The Norwegian Maritime Authority has maps displaying the borders of the various sea areas[8].

It is also a condition for the exemption in the first paragraph that the passenger ship is not a high-speed craft. In the Norwegian legislation there are slightly differing definitions for high-speed craft[9] due to the various definitions found in EEA legislation and in SOLAS. The Regulations of 6 September 1997 No. 1047 on the counting and registration of persons on board passenger ships now include the definition that is used in Directive (EU) 2017/2109, which is the same definition as in SOLAS. This means that vessels engaged in domestic voyages that are not currently certified as high-speed craft may be regarded as high-speed craft pursuant to the Regulations on the counting and registration of persons on board passenger ships.

[7] The wording "sea area D *or lesser sea area*" has been included to correspond with the wording of section 8 second paragraph.

[8] https://kart.sdir.no/

[9] The Regulations of 5 January 1998 No. 6 on the construction, equipment and operation of high-speed craft used as passenger craft or cargo craft have an equivalent definition of high-speed craft engaged on domestic voyages to Directive 2009/45. In addition, there is the definition in SOLAS chapter X regulation 1.3.

Hence, Directive (EU) 2017/2109 narrows down which ships that may be granted exemption from the requirement to communicate the number of passengers to the national reporting portal. Ships that have previously been exempted from communicating the number of passengers may now be required to report the number of passengers to the national reporting portal since they are considered high-speed pursuant to the definition in Directive (EU) 2017/2109. It is the responsibility of the shipping company to find out whether this applies to their vessels, and to adhere to the new adjusted requirements.

The second paragraphs states that an exemption may be granted from the duties of section 6 first and second paragraphs if the voyage is carried out exclusively in sea area D or lesser sea area, between two ports, or to or from the same port without intermediate calls. In addition, the proximity of search and rescue facilities must be ensured in the area. It is now specified that this exemption may only be granted to ships departing from a Norwegian port.

There is amendment in the third paragraph which means that only exemptions pursuant to section 8 second paragraph must be reported to ESA. This is due to the amendments to Directive (EU) 2017/2109.

In the fourth paragraph there is an amendment to the wording where it now specifies that the regulation refers to section 8 third paragraph.

In the fifth paragraph “seagoing” is replaced with “sea area D or greater sea area”. This refers to the geographical sea area where the ship is located.

In the fifth paragraph there are some linguistic adjustments in subparagraphs d and e which do not amend existing legislation.

Administrative and financial implications

The amendments will mainly have administrative consequences for the shipping companies and the Norwegian Coastal Administration.
Internal routines will have to be established, and possibly new IT solutions in the companies in order to communicate to the national reporting portal. The shipping companies already have systems in place for collecting data from the passengers. The change may, however, have bigger effects if anyone currently having an exemption from communicating the number of passengers will have to start communicating the number of passengers because they are now considered high-speed pursuant to section 8 first paragraph and the definition of high-speed craft in the Regulations.

We assume that the amendments may have some financial consequences for the companies, especially if they need new IT systems to communicate to the national reporting portal. The existing reporting portal, which is operated by the Norwegian Coastal Administration, needs to be updated to cater for the requirements of the Directive. The feedback from the Norwegian Coastal Administration is that the necessary amendments will be carried out before the deadline in section 11, which is 30 December 2023.

The amendments mean that the companies will no longer need an approval of their registration systems like they do today. This cuts down on administration both for the companies and the NMA.

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