



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from : the Secretariat  
to : the Shipping Working Group

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Prop Cion : 12059/03 MAR 113 CODEC 1094

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the transfer of cargo and passenger ships between registers within the Community

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1. On 6 August 2003, the Commission has transmitted to the Council a proposal for a Regulation of the European Parliament and of the Council on the transfer of cargo and passenger ships between registers within the Community.
2. On the basis of the remarks voiced by delegations and the Commission during the examination of the proposal by the Shipping Working Party on 9 September and 3 October 2003, the Presidency has worked on a possible draft compromise text, which is presented in Annex.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on the transfer of cargo and passenger ships between registers within the Community**

(Text with EEA relevance)

**DRAFT COMPROMISE TEXT**<sup>1</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

[...]

**(5a) A Member State receiving a ship should however remain able to apply rules differing in scope and nature from those referred to in the Conventions listed in Article 1(a).**

HAVE ADOPTED THIS REGULATION:

Article 1

*Purpose*

The purpose of this Regulation is to eliminate technical barriers to the transfer of cargo and passenger ships between the registers of the Member States while, at the same time, ensuring a high level of ship safety and environmental protection, in accordance with international conventions.

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<sup>1</sup> Changes in comparison with Commission texts are indicated in **bold** and [...].

## Article 2

### *Definitions*

For the purposes of this Regulation:

- a) "Conventions" means the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS), the 1966 International Convention on Load Lines (LL66), the International Convention on Tonnage Measurement of Ships, 1969 and the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) in their up-to-date versions, and related resolutions of mandatory status adopted **in the framework of** the International Maritime Organisation (IMO);
- b) "Requirements" means the safety and pollution prevention <sup>2</sup> requirements laid down in the Conventions;
- c) "Certificates" means certificates **and documents of compliance** issued by a Member State or by a recognised organisation on its behalf in accordance with the conventions;
- d) "Passenger ship" means a ship carrying more than twelve passengers;
- e) "Passenger" means every person other than:
  - (i) The master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
  - (ii) A child under one year of age;
- f) "Domestic voyage" means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- g) "International voyage" means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;

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<sup>2</sup> It is reminded that this clause implies that security or social conditions are not covered by this Regulation.

- h) "Cargo ship" means a ship [...] which is not a passenger ship **and which is not**
- (i) a ship of war or troopship, or another ship owned or operated by a Member State and used only on government non-commercial service; or**
  - (ii) a ship not propelled by mechanical means, a wooden ship of primitive build, a pleasure yacht not engaged in trade or a fishing vessel,**
  - (iii) a ship of less than 500 gross tonnage;**
- i) "Recognised organisation" means an organisation recognised in accordance with Article 4 of Directive 94/57/EC;
- j) **"Registration" means the act of allowing a ship to fly the flag of a Member State.**

### Article 3

#### *Scope*

1. This Regulation shall apply to:
  - a) Cargo ships, carrying valid certificates, which:
    - (i) Were built on or after 25 May 1980, or
    - (ii) Were built before that date, but have been certified by a Member State or by a recognised organisation acting on its behalf, as complying with the regulations for new ships defined in 1974 SOLAS, or, in the case of chemical tankers and gas carriers, with the relevant standard codes for ships built on or after 25 May 1980;

- b) Passenger ships engaged on domestic and/or international voyages, carrying valid certificates, which:
- i) Were built on or after 1 July 1998, or
  - ii) Were built before that date, but have been certified by a Member State or by a recognised organisation acting on its behalf as complying with the requirements set out for ships built on or after 1 July 1998:
    - In Directive 98/18/EC, for ships engaged in domestic voyages;
    - In 1974 SOLAS, for ships engaged in international voyages.

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2. This Regulation shall not apply to ships that are not permitted to access Member States' ports in accordance with Article 7b of Directive 95/21/EC.

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<sup>3</sup> F/NL/UK suggestion to re-introduce the 6-month active service clause which exists in the present regulation : this clause reads "ships [...] which [...] (b) have been flying the flag of, and registered in, a Member State, and in active service under that flag for at least six months"

<sup>4</sup> UK suggestion to include a new paragraph, reading: "1a. This Regulation shall not apply to ships that have been detained following inspection [in the port of a Member State, in accordance with Directive 95/21, as amended,] on [three] or more occasions in the five years preceding application for registration. Member States shall nevertheless give due and timely consideration to applications in respect of such ships."

## Article 4

### *Transfer of register*

1. A Member State shall not withhold from registration, for technical reasons arising from the conventions, a ship registered in another Member State which complies with the requirements and carries valid certificates and equipment approved or type-approved in accordance with Council Directive 96/98/CE of 20 December 1996 on marine equipment<sup>5</sup>.

In order to fulfil their obligations under regional environmental instruments ratified before 1 January 1992, Member States may impose additional rules in accordance with the optional annexes to the conventions.

**1a. This Article shall apply without prejudice, where applicable, to the possible specific requirements set up for operating the ship in accordance with Article 7 of Directive 98/18/EC and Directive 2003/25/EC.**

2. Upon receiving the request for transfer, the maritime administration of the losing register shall provide the maritime administration of the receiving register all relevant information on the ship, in particular, on her condition and equipment.

This information shall contain the history file of the vessel and, if applicable, a list of the improvements required by the losing register for registering the ship or renewing her certificates and of overdue surveys. **It shall include the documents and certificates listed in Annex 1.**

The maritime administrations shall co-operate to ensure proper implementation of the provisions of this paragraph.

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<sup>5</sup> OJ L 46 of 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p.53).

3. The maritime administration of the receiving register may subject the ship to an inspection to confirm that the actual condition of the ship and her equipment correspond to her certificates [...] referred to in Article 3.

The inspection shall be performed within a reasonable **period**.

If, following the inspection **and having given the owner of the ship a reasonable opportunity to rectify any problem**, the maritime administration of the receiving register is unable to confirm correspondence with the certificates [...], it shall notify the Commission in accordance with Article 6(1).

## Article 5

### *Certificates*

Upon the transfer, the maritime administration of the receiving register **or the recognised organisation acting on its behalf** shall issue certificates under the same conditions as those under the flag of the Member State of the losing register.

In so far as no new requirements are requested for existing ships, at the time of renewal, extension or revision of the certificates, the maritime administration of the receiving register **or the recognised organisation acting on its behalf** shall not impose requirements other than those initially prescribed for the full-term certificates.

## Article 6

### *Refusal of transfer and interpretation*

1. The Member State of the receiving register shall immediately notify the Commission of any refusal to issue new certificates for reasons based on divergences of interpretation of the requirements or of the provisions which the Conventions leave to the discretion of the Parties.

Unless the Commission is informed of an agreement between the Member States concerned within one month, it shall initiate proceedings in order to take a decision in accordance with the procedure laid down in Article 7(2).

2. Where a Member State considers that a ship cannot be registered under Article 4 for reasons of serious danger to maritime safety or to the environment other than those referred to in paragraph (1), registration may be suspended **until the suspension is confirmed or revoked.**

The Member State shall immediately bring the matter to the attention of the Commission, stating the reasons for the suspension of the registration. The suspension shall be confirmed or revoked in accordance with the procedure laid down in Article 7(2).

3. The Commission may consult the Committee referred to in Article 7 on any matter related to the interpretation and implementation of this Regulation, in particular in order to ensure that standards of maritime safety and environmental protection are not reduced.



## Article 7

### *Committee*

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) created by Article 3 of Regulation (EC) N°2099/2002.
2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

## Article 8

### *Reporting*

1. Member States shall transmit to the Commission a yearly succinct report on the implementation of this Regulation. The report shall provide statistical data on the transfer of ships [...] and list implementation difficulties encountered.
2. **By [...] <sup>6</sup> Member States shall transmit to the Commission a report identifying the specific measures taken to facilitate the implementation of this Regulation.**

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<sup>6</sup> Two years after the entry into force of the Regulation.

## Article 9

### *Amendments*

- 1. The definitions in Article 2 and the Annex I to the Regulation may be amended in accordance with the procedure referred to in Article 7(2) in order to take account of developments at international level, in particular, in the International Maritime Organisation (IMO), and to improve the effectiveness of this Regulation in the light of experience and of technical progress, in so far as such amendments do not broaden the scope of this Regulation.**
2. The amendments to the conventions may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) N° 2099/2002.

## Article 10

### *Abrogation*

Council Regulation (EEC) N°631/91 is hereby repealed.

Article 11

***Entry into force***

This Regulation shall enter into force on the [twentieth day]<sup>7</sup> 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,

For the European Parliament  
The President

For the Council  
The President

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<sup>7</sup> CY deems the 20 days too short to instruct administration services and classification societies.

Minimum list of certificates and documents composing the history file of the ship

(as referred in Article 4(2))

For all ships:

1. Ship safety certificates and exemption certificates,
2. International Tonnage Certificate and International Load Line Certificate,
3. Safe Management Certificate and Document of Compliance ISM,
4. International Oil Pollution Prevention Certificate
5. Stability information
6. Flag State inspection records,
7. Class records (statutory),
8. Summary of Port State Control records,
9. If relevant, High Speed Craft Safety Certificate and permit to operate high speed craft

As well as, for passenger ships:

1. List of operational limitations for passenger ships (SOLAS V-30)
2. For RO-RO passenger ships, information on the A/A maximum ratio

Or, for cargo ships carrying dangerous goods:

1. Document of compliance - dangerous goods.