

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 219 final

Brussels, 1 June 1990

Proposal for a

COUNCIL REGULATION (EEC)

on the transfer of ships from one register to another within the Community

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. General considerations

Although there are international conventions and regulations on maritime safety and the prevention of maritime pollution, transferring a ship to the flag of another Member State is often a costly operation for shipowners.

The international conventions establishing standards for safety and pollution prevention at sea leave room in certain areas for interpretation or the exercise of discretion by the Contracting Parties. These deficiencies have been made good by the Contracting Parties but, unfortunately, without harmonization. Furthermore, a number of governments have laid down additional rules establishing standards other than those set by International Maritime Organization (IMO) conventions.

National governments do not normally recognize certificates issued by another country. If a ship is to be transferred from one register to another it has to undergo an inspection to ensure that it complies with the safety regulations of the receiving country. This practice obliges the shipowner to undertake a partial conversion or refit of the vessel he is purchasing.

In practice, even where a vessel complies with international safety standards, is covered by valid certificates and has passed the Port State Control inspection, at the time of its transfer to another flag the shipowner may be required to replace or adapt equipment or to submit it for additional type-approval tests under the rules of the new State of registry.

The delays and additional costs to the shipowner arising from these formalities are reflected in the ship's operating costs. It is obvious that such practices are not in accordance with the aims of the Single Market. Moreover, the shipping industry has long since sought the abolition of these obstacles to trade in ships.

For this reason, in drawing up measures for improving the operating conditions of Community shipping, the Commission identified the problem of transferring ships from one register to another within the Community in its Communication entitled "A Future for the Community Shipping Industry".¹

As a parallel measure to setting up a Community Register, the Commission advocated the mutual recognition of ships' technical equipment on the basis of the "new approach" to technical harmonization and standardization adopted by the Council² having regard to IMO standards.

The Commission considers that, without prejudice to the safety standards laid down at international level or to the general level of maritime safety, no technical requirements should be imposed which would impede the transfer of a Community-registered vessel from one Community shipowner or flag to another. Consequently, the Commission has suggested that, during the period of time required to set up the Community Register, steps should be taken to abolish nationally imposed technical barriers.

Accordingly, in its proposal for the establishment of a Community Register,³ the Commission proposed that any vessel for which classification documents and certificates have been issued and which complies with the basic technical standards to be adopted by the Council before 1 July 1991, as provided for in the Treaty, may be transferred to the register of another Member State without having to comply with additional technical requirements.

The Commission's approach to the simplification of such transfers is shared by the Economic and Social Committee and the Council. Parliament will shortly debate the Commission's proposals on shipping.

The Economic and Social Committee has emphasized the need to avoid cumbersome administrative procedures resulting from the interference of Community rules with those laid down by IMO or the individual Member States.

1 COM(89)266 final, 3.8.1989.

2 Council Resolution of 7 May 1988 (OJ C 136, 4.6.1988).

3 Proposal for a Council Regulation included in the abovementioned Communication.

The Council has called on the Commission to present a proposal, as soon as possible, based on the principle of mutual recognition of existing international technical standards. To the Council, such a proposal would make an immediate contribution to improving the competitiveness of Community shipping.¹

The Commission is aware that the full free movement of goods will only be reached through the principle of technical harmonisation of ship equipment and certification as defined in the abovementioned "new approach". The Commission is of the opinion that in the meantime a first and positive step in this direction could be reached through the proposed procedure allowing for the free transfer of ships within the Community.

Starting from the principle of compliance with the international conventions on safety and the prevention of marine pollution, the Commission proposes mutual recognition of the safety level attested to by international certificates when a vessel flying the flag of a Member State of the Community is re-registered in another Member State. Where the vessel concerned complies with international standards, the Member States should undertake not to impose their national technical regulations which sometimes differ from those laid down in international conventions.

The Commission, supported by government experts, considers that passenger ships should not, at this stage, be covered by this Regulation, in view of their distinctive features and their uses: they are often constructed to meet additional requirements other than those laid down in the international conventions since they have to sail in waters affected by particular weather conditions. Furthermore, where these vessels (especially the older ones) are concerned, there are differences in the way in which the conventions are interpreted, particularly as regards the structural rules on fire protection and accident prevention, health and hygiene. Nevertheless the Commission undertakes to examine as soon as possible with the experts the possibility of including passenger vessels in the scope of the regulation, offering all the necessary guarantees on the safety level.

¹ Conclusions of the Council meeting of 4-5 December 1989.

The Commission also considers that the Council's wish, that a short and general proposal in the spirit of the internal market be submitted to it, can best be met by a regulation.

The Commission proposes setting up a Committee of experts to resolve any conflicts of interpretation which might arise from divergences of interpretation of the requirements of the international safety and pollution prevention conventions or recognition of certificates issued by classification societies. The problems relating to the recognition of such certificates concern the legal responsibility of the Member States which issue certificates of seaworthiness - a matter which goes well beyond the scope of this proposal.

In conclusion, the Commission wishes to stress that this proposal for a Regulation is without prejudice to:

- the application by the Member States of IMO or other international conventions;
- the application of Community rules pursuant to existing or subsequent legislation;
- the role of the IMO in drafting and interpreting international conventions on safety and the prevention of marine pollution.

II. Special considerations

Article 1

In order to make this Regulation easier to read, this Article defines the terms relating to international rules and regulations used in the Regulation.

Article 2

This Article defines the scope of the Regulation. Since application of the SOLAS (1974), LL 66 and MARPOL 73/78 Conventions ensures a high level of maritime safety and prevention of pollution by ships which is acceptable within the Community and without prejudice to the application of other international conventions and Community rules, the recognition of certificates is limited to the abovementioned Conventions.

The tonnage limit is that laid down in the conventions in respect of cargo vessels providing international transport services.

The introduction of an age limit and a requirement that vessels be covered by valid certificates will help to increase the level of safety at sea and the prevention of marine pollution within the Community. Passenger liners are excluded on the grounds of their distinctive characteristics. The conditions governing registration mean that only vessels flying the flag of a Member State of the Community can reap the benefit of this Regulation and ensure that standards of safety and pollution prevention are complied with before transfer.

Article 3

The non-application of national technical rules, combined with an acceptable level of safety and pollution prevention, makes it easier for vessels which comply with international standards to be transferred from one register to another within the Community without barriers to trade. The issue of new certificates includes the acceptance of the interpretations and methods of implementation of the conventions of other Member States made for the purposes of the ships design and equipment, in so far as they are in compliance with the provisions of the conventions, and of the approvals of particular fittings, materials, appliances or apparatuses, or type thereof, fitted on board the ship.

The national governments are responsible for issuing the international certificates relating to the safety of, and the prevention of pollution by, vessels and their equipment. The Member State to whose register the vessel is being transferred should retain a limited right of inspection in order to ensure that vessels flying the flag of a Member State of the Community meet with the standard of safety and prevention of marine pollution set by the abovementioned conventions.

Article 4

This Article ensures compliance with the principles underlying the Regulation when the certificates issued pursuant to Article 3 are renewed, extended or revised.

Article 5

The purpose of this Article is to set up a procedure of appeal to the Commission to safeguard the objective of transfer of ships which comply with the international safety and pollution prevention requirements, without barriers to trade and unnecessary costs.

Article 6

In the spirit of Articles 100 A (3) and 130 R of the Treaty it is necessary to insert a safeguard clause to permit a Member State to act in cases of serious danger to safety or the environment.

Article 7

This Article establishes a Committee composed of maritime safety experts to assist the Commission in the implementation of the regulation.

Article 8

This Article describes the procedure for consulting the Committee in the cases foreseen in Articles 5 and 6. This procedure is in conformity with the Council decision of 13/7/1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (87/373/EEC).

Article 9

This Article specifies the tasks of the Committee. The Committee will contribute to ensuring not only that vessels can be re-registered without barriers to trade or extra costs but also that maritime safety and pollution prevention standards are complied with in the Community. The Committee shall decide its own composition and rules of procedure.

Article 10

No comments.

PROPOSAL FOR A
COUNCIL REGULATION (EEC)
ON THE TRANSFER OF SHIPS FROM ONE REGISTER
TO ANOTHER WITHIN THE COMMUNITY

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of Economic and Social Committee,

Whereas the establishment and functioning of the internal market involves the elimination of technical barriers to the transfer of ships between the national registers while safeguarding a high level of safety of ships and environmental protection in conformity with international regulations;

Whereas measures to facilitate the transfer of ships within the Community are required to free European shipowners from unnecessary costs and administrative procedures involved in a change of register within the Community and also to improve the operating conditions and the competitive position of Community shipping;

Whereas the issue of international certificates for safety and pollution prevention, provided under the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS), the International Convention on Load Lines 1966 (LL 1966) and the International Convention for the Prevention of Pollution from Ships 1973, as modified by its Protocol of 1978 (MARPOL 73/78), is the responsibility of States;

Whereas the international Conventions leave important points of interpretation to the appreciation of individual contracting States;

Whereas, based on their respective interpretations of the Conventions, Governments of Member States issue, to all ships flying their flags that are subject to the provisions of these Conventions, international certificates certifying their compliance with these provisions;

Whereas the transfer of ships between the flags of Member States must not be impeded by technical objections, provided that the ship is recognized by a Member State as complying with the provisions of these international Conventions, and is equipped with materials and appliances which are deemed satisfactory by a Member State;

Whereas the Member States enforce national technical regulations, some provisions of which contain requirements other than those in the international Conventions and associated standards;

Whereas an adequate procedure should be established in view of the introduction of new provisions or possible divergences in the interpretation of the existing requirements;

Whereas to assist the Commission in assuring the implementation of this Regulation with a view to achieving the objective to facilitate the transfer of vessels within the Community without barriers to trade while safeguarding the high level of maritime safety and environmental protection in the Community, a committee of maritime safety experts should be established,

HAS ADOPTED THIS REGULATION :

Article 1

For the purpose of this Regulation :

- a) "Conventions" means the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS), the International Convention on Load Lines, 1966 (LL66), both as amended at 1 January 1991 and the International Convention for the prevention of Pollution from ships 1973, as modified by its Protocol 1978 (MARPOL 73/78) and their related Resolutions adopted by the International Maritime Organisation.
- b) "Requirements" means the safety and pollution prevention requirements as laid down in the Conventions.
- c) "Certificates" means certificates issued by or on behalf of a Member State in accordance with the Conventions as well as certificates issued for chemical tankers and gas carriers built before 1 July 1986, in accordance with the Bulk Chemical Code A.212 (VII) 7 or the Bulk Gas Code A 328 (IX) 7 .

Article 2

This Regulation shall apply to cargo ships of 500 tons gross tonnage and upwards which are

- a) built on or after 25 May 1980 or built before that date but certified by a Member State as complying with the regulations for new ships as defined in the 1974 SOLAS Convention and
- b) flying the flag of, and registered in, a Member State and in active service under that flag, and
- c) carrying valid certificates.

Article 3

1. Member States shall not withhold from registration a cargo ship registered in another Member State complying with the requirements and carrying valid certificates.
However, Member States party to the Convention on the protection of marine environment in the Baltic Sea area may impose such additional requirements as provided for therein.
2. New certificates shall be issued under the same conditions.
3. Nevertheless on transfer a ship may be subjected to inspection by the receiving Member State to confirm that the actual condition of the ship and its equipment corresponds with its certificates.

Article 4

In so far as requirements remained unchanged for existing ships, at the times of renewal, extension or revision of the certificates issued under Article 3, Member States shall not impose requirements other than those initially prescribed for the full term certificates.

Article 5

Member States shall immediately notify to the Commission any refusal to issue new certificates for reasons based on divergences of interpretation of the requirements.

The refusal shall be confirmed or revoked in accordance with the procedure laid down in Article 8, not less than one month after notification, unless the Commission is informed of an agreement between the Member States involved.

Article 6

Where a Member State considers that a ship cannot be registered under Article 3 for reasons of serious danger to safety or the environment outside the scope of certificates registration may be suspended for a period not exceeding three months and the Member State shall without delay bring the matter before the Commission, giving the reasons therefor. The suspension shall be confirmed or revoked in accordance with the procedure laid down in Article 8.

Article 7

The Commission shall be assisted by a Committee, (hereinafter called "the Committee") composed of maritime safety representatives of the Member States and chaired by a representative of the Commission.

Article 8

Where the procedure defined in this Article is used the representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority. If, on the expiry of six weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 9

The Committee, apart from the tasks laid out in Articles 5 and 6 may be consulted by the Commission :

- in ensuring that standards of maritime safety and environmental protection within the Community are not reduced through application of this Regulation.
- on any matter relating to the implementation of this Regulation.

The Committee shall draw up its rules of procedure.

Article 10

This Regulation shall enter into force on 1 January 1991.

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

Done at Brussels,.....

For the Council

The President

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

1. What is the main reason for introducing the measure ?
This proposal concerns the transfer of ships from one register to another within the Community. It secures mutual recognition of ship certificates issued by Member States and prohibits technical barriers to trade in the transfer of ships. Through its implementation the proposed regulation would eliminate many unnecessary costs borne by Community shipowners.
2. Features of the business in question
All enterprises which use ships for community and international trade.
3. What obligations does this measure impose directly on business ?
No additional obligations.
4. What indirect obligations are national, regional or local authorities likely to impose on business ?
No additional obligations.
5. Are there any special provisions in respect of SME's ?
None
6. What is the likely effect on :
 - a) The competitiveness of the business
The competitiveness of Community shipping will be enhanced through the elimination of unnecessary costs involved in the transfer of ships.
 - b) Employment
Positive.

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