Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21 April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91 (Text with EEA relevance)

REGULATION (EC) No 789/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 April 2004

on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) The establishment and functioning of the internal market involve the elimination of technical barriers to the transfer of cargo and passenger ships between the registers of Member States. Measures to facilitate the transfer of cargo and passenger ships within the Community are also required to reduce the costs and administrative procedures involved in a change of register within the Community, thereby improving the operating conditions and the competitive position of Community shipping.

(2) It is necessary, at the same time, to safeguard a high level of ship safety and environmental protection, in compliance with International Conventions.

(3) The requirements set out in the 1974 International Convention for the Safety of life at Sea (1974 SOLAS), the 1966 International Convention on Load Lines (LL 1966) and the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol (MARPOL 73/78) provide for a high level of ship safety and environmental protection. The International Convention on Tonnage Measurement of Ships, 1969 provides for a uniform system for the measurement of the tonnage of merchant ships.

(4) The international regime applicable to passenger ships has been strengthened and refined through the adoption of a considerable number of amendments to 1974 SOLAS

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by the International Maritime Organisation (IMO) and an increased convergence of the interpretations of the 1974 SOLAS rules and standards.

(5) The transfer of cargo and passenger ships flying the flag of a Member State between the registers of Member States should not be impeded by technical barriers, provided that the ships have been certified as complying with the provisions of relevant international Conventions by Member States or, on their behalf, by the organisations recognised under Council Directive 94/57/EC of 22 November 1994, on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations[(3)].

(6) A Member State receiving a ship should however remain able to apply rules which differ in scope and nature from those referred to in the Conventions listed in Article 2(a).

(7) In order to ensure a prompt and informed decision by the Member State of the receiving register, the Member State of the losing register should provide it with all relevant available information on the ship's condition and equipment. The Member State of the receiving register should, nevertheless, be able to subject the ship to an inspection to confirm its condition and equipment.

(8) Ships which have been refused access to Member States' ports under Council Directive 95/21/EC of 19 June 1995, concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)[(4)] or which have been detained more than once following an inspection in the port during the three years preceding the application for registration should not be able to benefit from the possibility of being transferred under the simplified system to another register within the Community.

(9) Relevant International Conventions leave important points of interpretation of the requirements to the discretion of the Parties. On the basis of their own interpretation, Member States issue to all ships flying their flags, that are subject to the provisions of relevant International Conventions, certificates certifying their compliance with these provisions. Member States enforce national technical regulations, some provisions of which contain requirements other than those in the Conventions and in associated technical standards. An appropriate procedure should therefore be established in order to reconcile divergences in the interpretation of existing requirements which may occur upon a request for transfer of register.

(10) In order to enable the implementation of this Regulation to be monitored, Member States should provide the Commission with succinct yearly reports. In the first yearly report Member States should identify any measures taken to facilitate the implementation of this Regulation.

(11) The provisions of Council Regulation (EEC) No 613/91 of 4 March 1991 on the transfer of ships from one register to another within the Community[(5)], are significantly reinforced and extended by this Regulation. Regulation (EEC) No 613/91 should therefore be repealed.

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(12) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(6)],

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 flying the flag of a Member State 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.

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 (LL 66), the 1969 International Convention on Tonnage Measurement of Ships, and the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol relating thereto (MARPOL 73/78), in their up-to-date versions, and related codes of mandatory status adopted in the framework of the International Maritime Organisation (IMO), together with Protocols and amendments thereto in their up-to-date versions;

(b) 'Requirements' means the safety, security and pollution-prevention requirements relating to the construction and equipment of ships laid down in the Conventions and, for passenger ships engaged on domestic voyages, those set out in Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships[(7)];

(c) 'Certificates' means certificates, documents and statements of compliance issued by a Member State or by a recognised organisation on its behalf in accordance with the Conventions, and for passenger ships engaged on domestic voyages, those issued in accordance with Article 11 of Directive 98/18/EC;

(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;

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(g) 'International voyage'	means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
(h) 'Cargo ship'	means a ship which is not a passenger ship;
(i) 'Recognised organisation'	means an organisation recognised in accordance with Article 4 of Directive 94/57/EC.

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 on domestic voyages,

— in 1974 SOLAS, for ships engaged on international voyages.

2 This Regulation shall not apply to:

a ships following delivery after completion of their construction that do not carry valid full-term certificates from the Member State of the losing register;

b ships that have been refused access to Member States' ports in accordance with Directive 95/21/EC during the three years preceding application for registration and to ships that have been detained following inspection in the port of a State signatory of the Paris Memorandum of Understanding of 1982 on Port State Control and for reasons relating to the requirements defined in Article 2(b), more than once during the three years preceding application for registration. Member States shall nevertheless give due and timely consideration to applications in respect of such ships;

c ships of war or troopships, or other ships owned or operated by a Member State and used only on government non-commercial service;

d ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts not engaged in trade or a fishing vessel;

e cargo ships of less than 500 gross tonnage.

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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/EC of 20 December 1996 on marine equipment[8].

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.

2 This Article shall apply without prejudice, where applicable, to any specific requirements laid down for the operation of a ship under Article 7 of Directive 98/18/EC and Article 6 of Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships[9].

3 Upon receiving the request for transfer, the Member State of the losing register shall provide the Member State of the receiving register, or make available to the recognised organisation acting on its behalf, 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. The information shall include all the certificates and particulars of the ship as required by the Conventions and relevant Community instruments as well as Flag State inspection and Port State control records. The Member States shall cooperate to ensure proper implementation of this paragraph.

4 Before registering a ship, the Member State of the receiving register, or the recognised organisation acting on its behalf, may subject the ship to an inspection to confirm that the actual condition of the ship and her equipment correspond to the certificates referred to in Article 3. The inspection shall be performed within a reasonable time frame.

5 If, following the inspection and having given the ship owner a reasonable opportunity to rectify any deficiencies, the Member State of the receiving register, or the recognised organisation acting on its behalf, is unable to confirm correspondence with the certificates, it shall notify the Commission in accordance with Article 6(1).

Article 5

Certificates

1 Upon the transfer and without prejudice to Directive 94/57/EC, the Member State of the receiving register, or the recognised organisation acting on its behalf, shall issue certificates to the ship under the same conditions as those under the flag of the Member State of the losing register, provided the reasons or the grounds on the basis of which the Member State of the losing register imposed any condition or granted any exemption or waiver continue to apply.

2 At the time of renewal, extension or revision of the certificates, the Member State 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 insofar as requirements for existing ships and conditions remain unchanged.