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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 613/91

of 4 March 1991

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 (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the establishment and functioning of the internal market involve the elimination of technical barriers to the transfer of ships between Member States' national registers; whereas measures to facilitate the transfer of ships within the Community are also required to free European shipowners from the costs and administrative procedures involved in a change of register within the Community and also to improve thereby the operating conditions and competitive position of Community shipping;

Whereas it is necessary, at the same time, to safeguard a high level of ship safety and environmental protection, in compliance with international Conventions;

Whereas the transfer of ships flying the flag of a Member State between the registers of Member States must not, therefore, be impeded by technical barriers, provided that the ships are recognized as complying with the provisions of these international Conventions;

Whereas the issue of international certificates for safety and pollution prevention, provided for under the 1974 International Convention for the Safety of Life at Sea (1974 Solas), the 1966 International Convention on Load Lines (LL 1966), the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol (Marpol 73/78) and the related resolutions of mandatory status adopted by the International Maritime Organization (IMO), is the responsibility of States; whereas, where private organizations issue certificates on behalf of a Member State, in accordance with the said Conventions, they also do so on that Member State's responsibility, as defined in those Conventions;

Whereas the international Conventions leave important points of interpretation to the discretion of individual contracting States; whereas, based on their respective interpretation 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 Member States enforce national technical regulations, some provisions of which contain requirements other than those in the international Conventions and associated technical standards; whereas an appropriate procedure should be established in view of solving divergences in the interpretation of existing requirements which may occur upon a request for transfer of ships and in order to take into account the introduction of new provisions in those Conventions;

Whereas this Regulation does not in any way prejudge the preparation and interpretation of conventions by the International Maritime Organization (IMO);

Whereas ships benefiting from the provisions of the Regulation must have been registered and in active service under the flag of a Member State for at least six months so as to give the latter sufficient time to check their condition;

Whereas a committee should be set up to assist the Commission in implementing and interpreting this Regulation with a view to achieving the objective of facilitating the transfer of ships within the Community while ensuring that standards of maritime safety and environmental protection are not reduced,

(1) OJ No C 153, 22. 6. 1990, p. 14.
(2) OJ No C 19, 28. 1. 1991.
(3) OJ No C 60, 8. 3. 1991.

HAS ADOPTED THIS REGULATION :

Article 1

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) and the International Convention for the Prevention of Pollution from Ships (Marpol 73/78), together with the amendments thereto in force at the date of adoption of this Regulation, and related resolutions of mandatory status adopted by the International Maritime Organization (IMO) ;

Without prejudice to the procedures for amending the said Conventions, the application, for the purposes of this Regulation, of subsequent amendments thereto which have entered into force shall be decided upon in accordance with the procedure laid down in Article 7 ;

(b) 'requirements' means the safety and pollution prevention requirements 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 [IMO Resolution A.212 (VII)] or the Bulk Gas Carrier Code [IMO Resolution A.328 (IX)].

Article 2

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

(a) were built on or after 25 May 1980, or

were built before that date, but :

— compliance of which with the regulations for new ships defined in the 1974 Solas Convention, and

— in the case of chemical tankers and gas carriers, compliance with the standards codes referred to in Article 1 (c) for ships built on or after 25 May 1980,

is certified by or on behalf of a Member State ;

and

(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 ;

and

(c) carry valid certificates.

Article 3

1. Member States shall not withhold from registration, for technical reasons arising from the Conventions, a cargo ship registered in another Member State complying with the requirements and carrying valid certificates and fittings and equipment approved or type-approved in the ship's country of origin.

In so far as on the date of entry into force of this Regulation they are bound by regional agreements for the protection of the marine environment, Member States may impose additional rules which conform with the requirements of the optional annexes to the Conventions.

2. Upon the transfer of the ship, the receiving flag Member State shall issue certificates under the same conditions as under the flag previously flown.

3. Where the certificates are issued by an organization on behalf of a Member State, the latter must ensure that the qualifications, technical experience and staffing of the said organization are such as will enable it, in applying the Conventions, to issue certificates guaranteeing a high level of safety.

The organization must be in a position to develop and update rules and regulations having the quality of accepted technical standards, and must operate with qualified and experienced surveyors so as adequately to assess a ship's condition.

4. Nevertheless, on transfer, a ship may be subjected to inspection by the receiving flag Member State to confirm that the actual condition of the ship and its equipment corresponds with its certificates and with the statements of compliance referred to in Article 2 (a).

Article 4

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

Article 5

1. Member States shall immediately notify to the Commission 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. 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 certifi-

cates, 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 7.

Article 6

The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.

Article 7

Where the procedure laid down in this Article is to be followed, 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 EEC 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 eight weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 8

The committee may also be consulted by the Commission on any matter relating to the implementation and interpretation of this Regulation and, in particular, in order to ensure that standards of maritime safety and environmental protection are not reduced.

The committee shall draw up its rules of procedure.

Article 9

This Regulation shall enter into force on 1 January 1992.

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

Done at Brussels, 4 March 1991.

For the Council

The President

J. F. POOS