

Opinion of the European Economic and Social Committee on the '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'

(COM(2003) 478 final — 2003/0180 (COD))

(2004/C 80/24)

On 1 September 2003, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 November 2003. The rapporteur was Dr Bredima Savopoulou.

At its 404th plenary session held on 10 and 11 December 2003 (meeting of 10 December), the European Economic and Social Committee adopted the following opinion by 78 votes in favour and seven abstentions:

1. Introduction

1.1. More than ten years after the entry into force of Regulation (EEC) No 613/91 (1 January 1992), it is appropriate to seek to improve Community rules on the transfer of cargo ships with a view to further eliminate technical barriers to such transfer. Regulation (EEC) No 613/91 seeks to reduce the costs and administrative procedures involved in a change of register within the Community, thereby improving the competitiveness of Community shipping, whilst safeguarding maritime safety in accordance with international conventions. Its basic philosophy is the recognition at European level that the safety standards enshrined in IMO Conventions are appropriate. In accordance with the Regulation, Member States forfeited the right to withhold from registration, for technical reasons arising from three IMO Conventions (1974 SOLAS, LL66 and MARPOL 73/78) cargo ships registered in other Member States, complying with the requirements set out in these Conventions and carrying valid certificates and approved equipment.

1.2. At the time of adoption of the Regulation it was not considered appropriate to include in the scope of the Regulation passenger ships due to their distinctive features, uses, variations in interpretations of requirements of the IMO conventions. Nevertheless, in the explanatory memorandum of the proposal leading to the adoption of Directive 98/18/EC on safety rules and standards for passenger ships, the Commission announced its intention to propose the amendment of the Regulation in order to extend its scope to passenger ships.

1.3. The reasons for the review exercise are threefold:

- substantial international and Community regulatory developments have occurred since the Regulation (EEC) No 613/91 was adopted. Relevant international (IMO) conventions have been amended, related resolutions adopted and a large body of Community *acquis* in maritime safety was adopted after the entry into force of the Regulation;
- the existence of divergent interpretations has emerged from the experience gathered in the implementation of Regulation (EEC) No. 613/91 and the request of European shipowners to extend the scope of the Regulation to cover passenger ships;
- the probability of a growing number of requests for transfer of ships in the context of the impending enlargement of the EU, which is likely to increase the current difficulties.

2. The Commission proposal

2.1. In order to take into account the above parameters, the Commission proposes:

- enlargement of the scope of the Regulation to include passenger ships against the background of an enhanced international regime and increased convergence of interpretation of IMO rules since 1991, as well as the adoption of Directive 98/18/EC on safety rules and standards for passenger ships and Directive 2003/25/EC on specific stability requirements for ro-ro passenger ships. The Commission is proposing that the extension should relate to all passenger ships built on or after 1 July 1998 (in line with Directive 98/18/EC). It will also apply to ships built before that date if certified as complying with the 1974 SOLAS requirements for ships built on or after 1 July 1998;

- better articulation with other EU safety instruments, in that a link is established with EU rules adopted since 1991, notably in relation Directive 95/21/EC on port state control, Directive 96/98/EC on marine equipment and Directive 94/57/EC on classification societies;
- reinforcement of the cooperation between national maritime administrations. This will involve a replacement of the current rule whereby only ships which have been in active service under an EU flag for at least 6 months may be transferred to another EU register under the Regulation. Instead, there will be enhanced cooperation between maritime administrations. In particular, the administration of the losing register must inform the gaining register of the improvements it required, if any, for registering the ship, renewing certificates and on overdue surveys, along the lines of the Transfer of Class Agreements of the members of the International Association of Classification Societies.

3. General comments

3.1. The proposal for a new Regulation is generally well balanced, motivated and consequent in its reasoning taking the existing Regulation (EEC) No 613/91 as its departure point. The objective of the new Regulation largely remains the same as in Regulation (EEC) No 613/91, i.e., the free movement of goods (ships) and the elimination of technical barriers to trade within the internal market, whilst safeguarding maritime safety in accordance with international conventions.

3.2. The EESC fully supports the extension to include passenger vessels under the scope of the Regulation and against the background of unified rules and in particular of Directives 98/18/EC⁽¹⁾ and 2003/25/EC⁽²⁾ and more importantly, of Directive 1999/35/EC⁽³⁾. The EESC notes that operational or social conditions are excluded from the scope of the Regulation which deals solely with technical requirements. However, there still exists the possibility of requiring compliance with additional national technical requirements, relating to the construction and equipment of ships laid down in the conventions, which may impede or delay the free transfer of ships within the EU.

(1) OJ L 144, 15.5.1998 (safety rules and standards for passenger ships).

(2) OJ L 123, 17.5.2003 (specific stability requirements for ro-ro passenger ships).

(3) OJ L 138, 1.6.1999 (mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services).

3.3. The EESC welcomes the further clarification with respect to the balance between the proper functioning of the internal market and the need to maintain a high maritime safety level, in pursuit of the established EU policy to enhance maritime safety and improve the competitiveness of the European fleet.

3.4. The EESC agrees that as a general rule a ship, while under banning, in accordance with Directive 95/21/EC on port state control, should not be transferred from one EU register to another.

3.5. The exchange of information between losing and gaining register, drawing inspiration from the so-called Transfer of Class Agreement (TOCA) of IACS, is broadly welcomed. The EESC would certainly encourage and support further enhanced co-operation between EU maritime administrations, also in the context of EU enlargement. It believes that such a strengthened cooperation will be beneficial in increasing the understanding of, and maintaining a high maritime safety level applied uniformly throughout the EU. It would, thus, avoid any risk of distortion of competition in the internal market.

3.6. The EESC notes the Commission's recent report regarding the progress of acceding states towards compliance with the *acquis communautaire*. It expresses its concern that a number of acceding flag states have not as yet reached the desired level of compliance which would allow the unreserved application of the proposed Regulation on 1 May 2004. Hence, special attention should be exercised with respect to the transfer of ships of acceding flag states to the registries of current EU member states. In this context, the EESC welcomes the proposed annual reporting by Member States (Article 8) with regard to the implementation and functioning of the proposed Regulation.

4. Detailed comments

Article 3

4.1. The EESC notes that ships should not benefit from the possibility to be transferred to another register within the Community until the refusal of access to European ports is revoked (recital 7). For reasons of clarity Article 3 § 2 should be worded accordingly: 'This Regulation shall not apply to ships that are not permitted to access Member States' ports in accordance with Article 76 of Directive 95/21/EC until the ban is revoked'.

Article 4

4.2. The requirement for type approval of the marine equipment by the flag state was one of the main obstacles for the unimpeded transfer of ships. Therefore, the inclusion of Directive 96/98/EC in paragraph 1 is supported.

4.3. For the purpose of unhindered achievement of the objective of the Regulation, Member States should not withhold from registration a ship only for technical reasons arising from the conventions, but also arising from additional national technical requirements. Therefore, it is suggested to add in the 2nd line of paragraph 1 the words 'or from any additional national technical requirements' after the word 'conventions'.

4.4. Paragraph 2 proposes that '... the maritime administration of the losing register shall provide the receiver register with 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 ...'. In the interest of transparency, it is suggested that the shipowner concerned should receive the same information at the same time. Similarly, in the interest of clarity and uniformity, there might be a need to further define what is meant by 'history file' (contents and time span).

4.5. The EESC notes the possibility for the receiving flag state to carry out some sort of 'inspection' (paragraph 3). The EESC understands from the specific considerations in the proposal that such an inspection should be limited in scope. In view of that, the EESC would suggest that any such inspection is made dependant on the information in the 'history file' transferred from the losing register. Attention is also drawn to the expression 'statements of compliance referred to in Article 3'. There seems not to be any reference in Article 3. Hence, it is suggested that the wording be either deleted or referred to compliance with paragraphs (a)(ii) or (b)(ii). The suggested text would then read:

'The maritime administration of the receiving register may subject the ship to an inspection, taking paragraph 2 into consideration, to confirm that the actual condition of the ship and her equipment correspond to her certificates and, where applicable, that she complies with paragraphs (a)(ii) or (b)(ii) as appropriate.'

4.6. Taking the stated objective of the proposed Regulation into consideration, the EESC is of the view that such an inspection, where deemed necessary, should be proportional and consider possible findings in the vessel history. Furthermore, the inspection should be performed without undue delay, rather than within a reasonable delay. Therefore, the relevant text should read:

'The inspection shall be performed without undue delay.'

Article 5

4.7. The provisions of Article 5 complement the procedures of Article 4 for achieving the objective of the Regulation. However, the term 'under the same conditions' needs clarification, possibly by way of the following rewording:

'under the same technical conditions based on the implementation of the provisions of the relevant conventions.'

Article 6

4.8. The EESC broadly supports the procedure as proposed in Article 6, which is largely the same as under Regulation (EEC) No 613/91. However, referring to paragraph 1, the large degree of harmonisation achieved thus far with respect to the current EU Member States, would not justify the refusal of issue of new certificates by the receiving Member State as required by Article 5. With respect to the acceding states, and until it has been established that the same level of harmonisation has been achieved, the receiving states should consider a rigorous implementation of Art. 4 point 3 (inspection to confirm the satisfactory condition of the ship and her equipment).

4.9. There is a need to clarify what happens to a vessel in the 'month' during which the two administrations having different interpretations have one month to solve their differences. It cannot be the intention of the proposal that the vessel is prevented from sailing during this month (or until the committee under the Regulation (COSS) has reached a final decision). The vessel coming from an EU flag with full certificates is acting in good faith and should be able to rely on the validity of such certificates. Until the administrations have solved their differences or the COSS committee decides differently, the vessel should be able to continue to trade with interim or short-term certificates issued by the receiving Member State.

4.10. There may be cases where the receiving Member State delays in taking timely action or insists on imposing additional national technical requirements. In such cases there should be a clear provision that the owner should be able to lodge his complaints with the Commission and request the referral of the matter to the Committee of Article 7 for the expeditions settlement of the dispute. Therefore, the word 'new' in the 2nd line of paragraph 1 should be replaced by the words 'full term'. For the same reasons, the words 'following complaints by owners' should be inserted after the words 'in Article 7' in the 1st line of paragraph 3.

5. Conclusions

5.1. The EESC considers the proposed Regulation a well-balanced and motivated text. It strikes a balance between the proper functioning of the internal market and the need to maintain a high maritime safety level, in pursuit of the EU policy to enhance maritime safety and improve the competitiveness of the European fleet.

5.2. The EESC fully supports the extension to include passenger vessels under the scope of the Regulation.

5.3. The EESC agrees that as a general rule a ship, while under banning in accordance with Directive 95/21/EC (on port state control), should not be transferred from one EU register to another. Ships should not benefit from the possi-

bility to be transferred to another EU register until the refusal of access to European ports is revoked.

5.4. In order to achieve the objective of the Regulation, Member States should not withhold from registration a ship only for technical reasons arising from the conventions but also arising from additional national technical requirements.

5.5. The EESC expresses its concern that a number of acceding flag states have not as yet reached the desired level of compliance which would allow the unreserved application of the proposed Regulation on 1 May 2004. Hence, special attention should be exercised with respect to the transfer of ships of acceding flag states to the registries of current EU Member States. The EESC proposes a rigorous implementation of inspections of ships of acceding flag states to confirm their satisfactory condition prior to transfer until it is established that the same level of harmonisation has been achieved by the acceding flag states.

Brussels, 10 December 2003.

The President
of the European Economic and Social Committee
Roger BRIESCH