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► **B** 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)

(OJ L 138, 30.4.2004, p. 19)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009	L 87	109	31.3.2009
► <u>M2</u>	Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019	L 198	241	25.7.2019



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

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**on the transfer of cargo and passenger ships between registers
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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⁽¹⁾;
- (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;

⁽¹⁾ OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

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- (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;
- (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;

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(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.

*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 ⁽¹⁾.

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 ⁽²⁾.

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).

⁽¹⁾ OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC.

⁽²⁾ OJ L 123, 17.5.2003, p. 22.

▼B*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.

*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, or to authorise the issuing of, new certificates to a ship for reasons based on divergences of interpretation of the requirements or of the provisions which the Conventions or relevant Community instruments 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 referred to in Article 7(2).

2. Where a Member State considers that a ship cannot be registered under Article 4 for reasons relating to serious danger to safety, security or to the environment, other than those referred to in paragraph 1, registration may be suspended.

The Member State shall immediately bring the matter to the attention of the Commission, stating the reasons for the suspension of the registration. The decision not to register the ship shall be confirmed or not in accordance with the procedure referred to 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 safety, security and environmental protection are not reduced.

▼M1*Article 7***Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council ⁽¹⁾.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

⁽¹⁾ OJ L 324, 29.11.2002, p. 1.

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

▼ M2

▼ B*Article 8***Reporting**

1. Member States shall transmit to the Commission a succinct yearly report on the implementation of this Regulation. The report shall provide statistical data on the transfer of ships carried out in accordance with this Regulation and list any difficulties encountered in its implementation.
2. By 20 May 2008 the Commission shall submit a report to the European Parliament and the Council on the implementation of this Regulation, based in part on the reports submitted by the Member States. In this report, the Commission shall assess, inter alia, whether it is appropriate to amend the Regulation.

*Article 9***Amendments****▼ M2**

1. Within the scope of this Regulation as defined in Article 3, the Commission is empowered to adopt delegated acts in accordance with Article 9a amending the definitions in Article 2 in order to take account of developments at international level, in particular in the IMO, and to improve the effectiveness of this Regulation in the light of experience and technical progress.

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2. Any amendment to the Conventions may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

▼ M2*Article 9a***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(1) shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 9(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 9(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

▼B*Article 10***Repeal**

Regulation (EEC) No 613/91 is hereby repealed.

*Article 11***Entry into force**

This Regulation shall enter into force on the twentieth day 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.

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.