

Recreational Craft Directive RYA Compliance Guide

Appendix 10



Secondhand Boats in EU States at their time of accession to the EU

Below is reproduced a letter from the EU Commission

EUROPEAN COMMISSION - ENTERPRISE DIRECTORATE-GENERAL

*Brussels, 13.i.O.O * 0964*5*

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Dear Mr. Kershaw,

I refer to your letter of 16 July 2004 on the above mentioned subject and our reply letter of the 27th of August 2004 with which we informed you that we would consult with our legal service and provide you with an answer to your questions about the legal status of non CE-marked craft placed in the new Member States when these are placed on the market after accession date as second hand products. I have the pleasure of reporting hereafter on the outcome of this consultation.

The preliminary view of the Commission services presented at the ADCO Working Group meeting on 27 May 2004, was that non CE-marked boats placed on the market and put into service in the territory of the new Member States prior to the accession date, would need to comply with the Recreational Craft Directive and be CE-marked in case of sale or change of ownership after this date. This view was based upon the consideration that such sale or change of ownership would constitute the moment when the product would be made available on the Community Market for the first time.

Following the consultation with our legal service, this view has now been revised as follows. It is clear that from the accession date the new Member States have to comply with the provisions of the Recreational Craft Directive. From the entry into force of the Directive for the new Member States, i.e. the 1st of May 2004, the placing on the market of products covered by the Directive is subject to the provisions of the Directive. By contrast, products that were placed on the market and put into service in the new Member States prior to this date are not covered by these provisions. As a consequence, and in line with the interpretation already provided in the Guide to the implementation of directives based on the New Approach and on the Global Approach, these used products are subject to free movement as from the accession date according to the principles laid down by Articles 28 and 30 of the EC Treaty.

Article 28 of the EC Treaty provides that quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States. This provision applies as of 1 May 2004 to the enlarged Community and hence no such restrictions may be applied between Member States. A restriction on imports from a "new" Member State applied by another Member State on the grounds that the product has been placed

on the market and put into service in the new Member State before accession would be caught by the prohibition laid down in Article 28.

Article 30 of the EC Treaty provides that the provisions of Article 28 shall not preclude Member States from prohibiting or restricting imports, exports or goods in transit, if justified on grounds of, inter alia, the protection of health and life of humans, animals or plants. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

In view of this revised interpretation, the preliminary views that were presented at the ADCO Working Group meeting in May 2004 have therefore become obsolete and it is our intention to have this clarified and confirmed at the next ADCO meeting in November 2004.

We apologise for the delay in replying in substance to your questions but the consultation process has required more time than anticipated. We trust that this revised interpretation will alleviate your concerns, and we are at your disposal in case you would need some further clarifications.

Yours sincerely,

Gwenole Cozigou
Head of Unit

Commission européenne, B-i 049 Bruxelles / Europese Commissie, B-i 049 Brussel - Belgium. Telephone: (32-2) 299 1111 Office: AN 88 6/55. Telephone: direct line (32-2) 2951304. Fax: (32-2) 2967014.