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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the European Committee for drawing up Standards in the field of Inland Navigation and in the Central Commission for the Navigation on the Rhine on the adoption of standards concerning professional qualifications in inland navigation

Delegations will find attached document COM(2021) 41 final.

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2021/0024 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the European Committee for drawing up Standards in the field of Inland Navigation and in the Central Commission for the Navigation on the Rhine on the adoption of standards concerning professional qualifications in inland navigation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf at the next meeting of the European Committee for drawing up Standards in Inland Navigation (CESNI) and at the next plenary session of the Central Commission for the Navigation on the Rhine (CCNR) in connection with the envisaged adoption of the standard for basic safety training for deckhands and the standard for standardised communication phrases in four languages.

2. CONTEXT OF THE PROPOSAL

2.1. CCNR and CESNI

The Central Commission for the Navigation on the Rhine (CCNR) is an international organisation with regulatory competences for inland navigation transport matters on the Rhine. Four EU Member States (Belgium, France, Germany and the Netherlands) and Switzerland are parties to the CCNR.

The revised Convention for Navigation on the Rhine, signed on 17 October 1868 in Mannheim, defines the legal framework governing the use of the Rhine as an inland waterway for navigation and lays down the powers of the CCNR. The version of the Convention that is currently applicable was the outcome of a Convention amending the Revised Convention for Navigation on the Rhine, adopted on 20 November 1963, which entered into force of 14 April 1967. Plenary meetings are held twice a year. They are attended by representatives of the CCNR Member States. The plenary meeting is the CCNR's decision-making body. It adopts the Central Commission's resolutions and adopts and amends the Central Commission's technical regulations. Each CCNR Member State has one vote, and decisions are reached unanimously. These resolutions are legally binding. The EU is not a member of the CCNR.

In 2015, the CCNR adopted a resolution creating a European committee for drawing up common standards in the field of inland navigation (Comité Européen pour l'Élaboration de Standards dans le Domaine de Navigation Intérieure – CESNI). Its mission includes the adoption of technical standards in various fields, in particular as regards vessels, information technology and crew, the uniform interpretation of these standards and of the corresponding procedures as well as deliberations on safety of navigation, protection of environment or other areas of navigation.

CESNI is composed of experts representing CCNR Member States and EU Member States that have voting rights on the basis of one vote per State. The EU is not a member of CESNI. However, it may participate in the work of CESNI, along with international organisations whose mission covers the areas concerned by CESNI, without voting rights.

2.2. The envisaged act of the CESNI and CCNR

At its next plenary meeting, the CESNI is to adopt a standard for basic safety training for deckhands (ref. cesni 20_04) and a standard for standardised communication phrases in four languages (ref. cesni 20_39).

Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation, and repealing Council Directives 91/672/EEC and 96/50/EC¹ introduces harmonised rules in the field of professional qualifications in inland navigation in Europe and establishes certain standards in the field of professional qualifications. The above-mentioned two standards are not required by the Directive but have been developed by CESNI to facilitate the implementation of the requirements falling within the scope of the Directive and to encourage harmonisation.

In accordance with Annex I of Directive (EU) 2017/2397, it is necessary to complete basic safety training according to national requirements to obtain the certificate of qualification as a deckhand. The CESNI standard for basic safety training for deckhands defines requirements that CESNI Member States could follow as their national requirements to ensure the same level of service quality.

In accordance with Annex II of Directive (EU) 2017/2397, it is required from boatmen and boatmasters to have the ability to use standardised communication phrases in situations with

¹ Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation, and repealing Council Directives 91/672/EEC and 96/50/EC (OJ L 345, 27.12.2017, p.53).

communication problems. The CESNI standard for standardised communication phrases in four languages sets up in details such a system of communication.

CESNI experts have prepared these two standards in 2019 and 2020 and CESNI Committee decided at its meeting of 30 April 2020 to schedule their adoption at the next meeting.

CESNI experts (CESNI/QP working group) have prepared the standard for basic safety training for deckhands and for standardized communication phrases under CESNI work programmes 2016-2018 and 2019-2021. The following technical meetings have addressed this topic and allowed reaching an agreement at the level of the CESNI:

- working meetings (24.05.2018; 6-7.10.2018; 08.05.2019; 11.09.2019; 06.11.2019; 06.02.2020; 22.04.2020) and
- Committee meeting (30.04.2020).

All EU Member States have (protected) access to the above-mentioned draft standards by means of a dedicated Website (cesni.eu).

ES-QIN standards (European Standards for Qualifications in Inland Navigation) will be updated to incorporate these two new standards.

The CCNR will adopt a resolution in order to include the reference to the most recent version of ES-QIN standards, including these two standards, in the Regulation for Rhine Navigation Personnel.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The decision – establishment of the Union position – is required to ensure that EU interests are adequately taken into account when adopting decisions concerning the establishment of the standards for basic safety training for deckhands and for standardized communication phrases in four languages. The subject falls within EU competence since these standards are aimed at facilitating the implementation of Directive (EU) 2017/2397.

The proposed position of the Union is to support the adoption of the two standards as they will contribute to maintaining the highest level of safety in inland navigation and encourage harmonisation.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement².

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’³.

4.1.2. *Application to the present case*

Both CESNI and the CCNR are bodies set up under an international agreement.

Although the rules adopted by CESNI are not binding per se, they will become binding on CCNR members once the CCNR modifies its legislative framework (Regulations for Rhine Navigation Personnel) to refer to the standards adopted by CESNI and making these standards mandatory in the framework of the application of the Revised Convention for Rhine Navigation. The binding character of such Regulation among the CCNR Members is established in the Mannheim Convention of 17 October 1868⁴.

Therefore, it is necessary to establish the position to be adopted on the Union's behalf within CESNI and CCNR for the adoption of standards on professional qualifications in inland navigation.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. **Substantive legal basis**

4.2.1. *Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. *Application to the present case*

The main objective and content of the envisaged acts relate to common transport policy.

Therefore, the substantive legal basis of the proposed decision is Article 91(1) TFEU.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

⁴ Revised Convention for Rhine Navigation of 17 October 1868, as amended on 20 November 1963.

4.3. Conclusion

The legal basis of the proposed decision should be Article 91(1) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The revised Convention for Navigation on the Rhine of 17 October 1868, amended by the Convention amending the Revised Convention for Navigation on the Rhine, adopted on 20 November 1963 entered into force of 14 April 1967.
- (2) Pursuant to Article 17 of the Convention, the Central Commission for the Navigation on the Rhine (CCNR) may adopt requirements in the field of professional qualifications.
- (3) The European Committee for drawing up standards in the field of inland navigation ('CESNI') was created on 3 June 2015 in the framework of the CCNR in order to develop technical standards for inland waterways in various fields, in particular as regards vessels, information technology and crew.
- (4) The CESNI is expected to adopt in its next meeting in April 2021 the standard for basic safety training for deckhands laying down training requirements that Member States could follow as their national requirements and the standard for standardised communication phrases in four languages for boatmen and boatmasters to be able to cope with situations with communication problems. Both standards aim at facilitating the implementation of the requirements falling within the scope of Directive (EU) 2017/2397 of the European Parliament and of the Council¹.
- (5) In addition, it is envisaged that at its next plenary session, the CCNR will adopt a resolution that will amend the Regulation for Rhine Navigation Personnel in order to include a reference to ES-QIN standards (European Standards for Qualifications in

¹ Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation, and repealing Council Directives 91/672/EEC and 96/50/EC (OJ L 345, 27.12.2017, p. 53).

Inland Navigation) including the CESNI standard for basic safety training for deckhands and the CESNI standard for standardised communication phrases.

- (6) The CESNI standards for basic safety training for deckhands and the standard for communication phrases should contribute to maintaining the highest level of safety in inland navigation and would encourage harmonisation in the context of Directive (EU) 2017/2397.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in CESNI and in the CCNR.
- (8) The Union is not a member of the CCNR nor of CESNI. The Union's position is to be expressed by the Member States of the Union that are members of those bodies, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union at the meeting of the plenary session of the European Committee for drawing up Standards in the field of Inland Navigation (CESNI) where the European Standards for professional qualifications in inland navigation with references cesni (20)_04 and cesni (20)_39 are decided upon, shall be to agree to their adoption.
2. The position to be taken on behalf of the Union at the meeting of the plenary session of the Central Commission for the Navigation of the Rhine (CCNR) where the CCNR will adopt a resolution amending the Regulation for Rhine Navigation Personnel in order to include a reference to the European Standards for professional qualifications in inland navigation, as well as references to cesni (20)_04 and cesni (20)_39, shall be to support all proposals aligning the requirements of the Regulations for the Rhine Navigation Personnel with those of the European Standards for professional qualifications in inland navigation.

Article 2

1. The position referred to in Article 1(1) shall be expressed by the Member States of the Union that are members of the CESNI, acting jointly.
2. The position referred to in Article 1(2) shall be expressed by the Member States of the Union that are members of the CCNR, acting jointly.

Article 3

Minor technical changes to the positions set out in Article 1 may be agreed upon without further decision of the Council.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*