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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 October 2018
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 technical requirements for inland waterways vessels

Delegations will find attached document COM(2018) 707 final.

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2018/0363 (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 technical requirements for inland waterways vessels

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the meeting of the European Committee for drawing up Standards in Inland Navigation (CESNI) of 8 November 2018 and at a meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) in connection with the envisaged adoption of the European standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN standard 2019/1).

2. CONTEXT OF THE PROPOSAL

2.1. The revised Convention for Navigation on the Rhine

The revised Convention for Navigation on the Rhine of 17 October 1868 defines the legal framework governing the use of the Rhine as an inland waterway for navigation and lays down the attributions of the Central Commission for the Navigation on the Rhine (CCNR). The version of the Convention that is currently applicable was the outcome of the Convention of 20 November 1963, which entered into force on 14 April 1967.

Four Member States (Belgium, France, Germany and the Netherlands) and Switzerland are today parties to the revised Convention for Navigation on the Rhine.

2.2. CCNR and CESNI

The CCNR is an international organisation whose mission is to implement initiatives intended to guarantee freedom of navigation on the Rhine and to promote navigation on the Rhine. 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. Each 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 Member States of the CCNR and of the EU 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.

2.3. The envisaged act of the CESNI and CCNR

At its meeting of 8 November 2018, the CESNI is to adopt standards regarding laying down Technical Requirements for Inland Navigation vessels (ES-TRIN standard 2019).

The first version of ES-TRIN (ES-TRIN 2015) was finalised by CESNI at its meeting of 28 September 2015. It was formally adopted by the CESNI Plenary meeting on 26 November 2015. The first amendment ES-TRIN standard 2017 was adopted by CESNI Plenary meeting on 6 July 2017.

ES-TRIN is regularly updated taking account of the work of the CESNI working groups.

Regular up-date of ES TRIN is necessary to:

- maintain the high level of safety in inland navigation
- follow the technical evolution (ex. fire-fighting systems, navigation equipment)
- ensure compatibility with EU legal framework.

During 2017 and 2018, CESNI experts have prepared the amended standard ES-TRIN 2019/1. ES-TRIN 2019/1 incorporates various amendments in particular concerning the following areas:

- automated external defibrillators;
- fire-fighting systems - K₂CO₃;
- special provisions for electrical propulsion systems (Chapter 11);
- transitional provisions for:
 - maximum noise level,
 - engines,
 - electrical equipment and installations,
 - ship's boats,
 - escape routes on passenger vessels,
 - propulsion system of passenger vessels and
 - safety equipment aft of the aft-peak bulkhead.

At its meeting of 10 April 2018, CESNI decided to schedule the adoption of the ES-TRIN standard 2019 at the meeting on 8 November 2018. Before this meeting on 8 November 2018, it is expected that only formal and minor changes will be made to the draft standard. ES-TRIN standard 2019/1 will be published by means of a dedicated Website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

ES-TRIN standard 2019/1 will be incorporated into EU law in accordance with Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying

down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC¹.

The Technical standards adopted by CESNI are included in Annex II of Directive 2016/1629 and have to be updated by means of delegated acts.

In order to ensure consistency of two existing legal regimes for technical requirements for inland navigation vessels (Rhine and UE) it is necessary to provide the same standards. Both EU law and CCNR Regulation will be referring to ES-TRIN 2019/1 from 1 January 2020.

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 the inland navigation vessels.

The update of the ES-TRIN technical standard has been the subject of intensive preparation at the level of the CESNI experts. A large range of public and private sector experts has been consulted in this respect. The following technical meetings have been carried out during the development of the standard at the level of the CESNI:

- working meetings (21-22.02.2017; 28-29.06.2017; 27-28.09.2017; 28-30.11.2017; 20-22.02.2018) and
- Committee meeting (10.04.2018).

These meetings allowed reaching an agreement at the level of experts concerning the technical requirements for inland waterway vessels.

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

¹ Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118)

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

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*

Regarding the applicability of Article 218(9) TFEU, the procedure therein must be respected once the conditions provided therein are fulfilled. These conditions are: (a) the relevant area falls under Union competence, (b) the Union position is expressed in a body set up by an international agreement, when that body is called upon to adopt (c) acts having legal effects. It has been clarified by the jurisprudence that Union membership in the relevant body is not a pre-requisite for Article 218(9) TFEU to apply.

It is evident in this case that the technical requirements for inland navigation vessels do not only fall into Union competence but what is more, the EU has exercised its competence through Directive (EU) 2016/1629 and the area of technical requirements for inland navigation vessels is regulated for the most part by common Union rules.

Both CESNI and CCNR satisfy the second criterion in that they are bodies set up under an international agreement.

Although the rules adopted by CESNI are not binding per se, it is clear that they will become binding on CCNR members once the CCNR modifies its legislative framework (Rhine vessel inspection regulations) to refer to the standard adopted by CESNI and making this standard 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.

Moreover, it is also clear from ECJ case law that a non-binding act of an international organisation can be considered as an "act having legal effects" for the purpose of the application of Article 218(9) TFEU whenever this act is capable of decisively influencing the content of EU law. As explained above, the framework applicable under the Revised Convention for Rhine Navigation has to be taken into account for any amendments to Directive (EU) 2016/1629.

The Technical standards adopted by CESNI are included in Annex II of Directive 2016/1629 and have to be updated by means of delegated acts.

Therefore the Council has to adopt a decision under Article 218(9) TFEU establishing the position to be adopted on the Union's behalf within CESNI for the adoption of standards on technical requirements for inland navigation vessels.

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

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

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).

4.3. Conclusion

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

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 technical requirements for inland waterways vessels

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) Action by the Union in the sector of inland navigation should aim to ensure uniformity in the development of technical requirements applied in the Union, as regards inland waterway vessels to be applied in the Union.
- (2) 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.
- (3) For efficient transport on the inland waterways, it is important that the technical requirements for vessels are compatible and as harmonised as possible under different legal regimes in Europe. In particular, Member States which are also members of the CCNR should be authorised to support decisions harmonising the CCNR rules with those applied in the Union.
- (4) CESNI is expected to adopt the European Standard laying down Technical requirements for Inland Navigations vessels ('ES-TRIN' standard') 2019/1 at its meeting on 8 November 2018.
- (5) ES-TRIN standard 2019/1 lays down uniform technical requirements necessary to ensure the safety of inland waterway vessels. It includes provisions regarding shipbuilding, fitting out and equipment for inland waterway vessels, special provisions regarding specific categories of vessels such as passenger vessels, pushed convoys and container vessels, provisions regarding the automatic identification system equipment, provisions regarding vessel identification, a model of certificates and register, transitional provisions as well as instructions for the application of the technical standard.

- (6) Directive (EU) 2016/1629 of the European Parliament and of the Council⁵ in its Annex II directly refers to the technical requirements for craft as being those provided in ES-TRIN standard 2017/1⁶. The Commission is empowered to update this reference in Annex II, to the most recent version of the ES-TRIN standard and to set the date of its application.
- (7) Therefore, ES-TRIN standard 2019/1 will affect Directive (EU) 2016/1629.
- (8) The Union is a member neither of the CCNR nor of CESNI. It is therefore necessary for the Council to authorise the Member States to express within those bodies the position of the Union as regards the adoption of ES-TRIN standard 2019/1.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union within the European Committee for drawing up Standards in the field of Inland Navigation (CESNI) on 8 November 2018 shall be to agree to the adoption of the European Standard laying down Technical Requirements for Inland Navigation vessels ('ES-TRIN standard') 2019/1.
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 technical requirements for inland navigation vessels are decided upon shall be to support all proposals aligning the technical requirements with those of ES-TRIN standard 2019/1.

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.

⁵ Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118).

⁶ As amended by Commission Delegated Directive (EU) 2018/970 of 18 April 2018 amending Annexes II, III and V to Directive (EU) 2016/1629 of the European Parliament and of the Council laying down technical requirements for inland waterway vessels (*OJ L 174, 10.7.2018, p. 15*)

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*