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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 290 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Central Commission for the Navigation on the Rhine on the adoption of the revised Regulation for Rhine Navigation Personnel (RPN)

Delegations will find attached document COM(2022) 290 final.

Encl.: COM(2022) 290 final

Brussels, 20.6.2022
COM(2022) 290 final

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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Central Commission
for the Navigation on the Rhine on the adoption of the revised Regulation for Rhine
Navigation Personnel (RPN)**

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EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf as regards a resolution to be taken by the Central Commission for the Navigation on the Rhine (CCNR) in the coming months by written procedure, regarding the draft Regulation for Rhine Navigation Personnel (RPN). The RPN is in the process of being revised to take into account 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.

2. CONTEXT OF THE PROPOSAL

2.1. CCNR

The 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 is the outcome of a Convention amending the Revised Convention for Navigation on the Rhine, adopted on 20 November 1963, which entered into force on 14 April 1967.

Under this framework, CCNR has adopted a number of Regulations. The legal act which covers crew related requirements is the Regulation for Rhine Navigation Personnel (RPN).

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. Exceptionally decisions can be taken by written procedure, also by unanimity. The resolutions are legally binding. The EU is not a member of the CCNR.

2.2. The envisaged act of the CCNR

In the coming months the CCNR is to adopt a resolution to amend the RPN, which is the technical regulation which covers crew related requirements. The binding character of the RPN among the CCNR Members is established in the Mannheim Convention of 17 October 1868. The amendment is necessary in order to take into account Directive (EU) 2017/2397. While the requirements for crew members navigating on the Rhine river fell outside the scope of Directives 91/672/EEC and 96/50/EC, Directive 2017/2397 extends the application of its rules to the Rhine river.²

Article 10(2) of Directive (EU) 2017/2397 reads as follows:

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).

² See recital 4 of Directive (EU) 2017/2397.

“2. Any certificate of qualification, service record book or logbook issued in accordance with the Regulations for Rhine Navigation Personnel, which lay down requirements that are identical to those of this Directive, shall be valid on all Union inland waterways. Such certificates, service record books and logbooks that have been issued by a third country shall be valid on all Union inland waterways, provided that that third country recognises, within its jurisdiction, Union documents issued pursuant to this Directive.”

Therefore, Article 10(2) of this directive requires that for any certificate of qualification, service record book or logbook issued in accordance with the RPN to be valid on Union inland waterways the RPN must lay down requirements that are identical to those of the Directive. For Rhine documents issued after 17 January 2022 to be valid in the EU, the RPN must therefore be revised accordingly.

The resolutions are prepared by committees and working parties. The CCNR’s Committee on Social Issues, Employment and Professional Training (STF) and its working group on social issues, employment and vocational training (STF/G) is in charge of professional qualifications. Following the Commission non-paper mentioned below, the CCNR established a “Task force RPN” to revise the initial draft.

The work on the revision started in June 2018. The following technical meetings had addressed this topic and allowed reaching an agreement at the level of the CCNR on a first draft:

- STF/G meetings (22/03/2018, 06/09/2018, 22-23/01/2019, 21/02/2019, 19/03/2019, 09/05/2019, 10-11/09/2019, 9/10/2019, 06-07/11/2019);
- STF meetings (21/03/2018, 19/03/2019, 10/10/2019);
- CCNR plenary (07/06/2018, 04/12/2019);

On 22 October 2020, the Commission submitted to Council a non-paper with the view to establish the EU position, during the meeting of the SFT Working Group of CCNR on 5 November 2020 and the plenary session of the CCNR on 3 December 2020, regarding the first version of the RPN submitted to the Commission on 20 December 2019. A number of provisions of the first draft version raised serious concerns on the grounds that they were either incompatible with or not identical to the provisions laid down in Directive (EU) 2017/2397. The Council did not take position and the CCNR withdrew the adoption of the RPN from the agenda of the above-mentioned two meetings. Following a series of meetings at technical level between the Commission services and the CCNR and following several exchanges of text proposals, the CCNR submitted on 31 March 2022 a fourth version of a draft revised RPN. The subject matter of this proposal is that fourth version, subject to specific amendments proposed by the Commission.

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

A decision establishing the position on Unions behalf on the basis of Article 218(9) TFEU is required since the subject falls within exclusive external EU competence by virtue of the last limb of Article 3(2) TFEU, given that the matters covered by the RPN are regulated in Union law by the harmonised provisions contained in Directive (EU) 2017/2397, Directive 2008/68/EC³ and Directive 2005/36/EC⁴.

³ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

The proposed position of the Union is to support the adoption of an amended version of the RPN (see Annex). The Commission considers that modifications to the CCNR proposal as submitted on 31 March 2022 are required for the following reason:

Article 10(2) of Directive (EU) 2017/2397 accepts the co-existence of the EU and the CCNR's legal frameworks by stating that certificates of qualification, service record books and logbooks issued in accordance with the RPN, which lays down requirements that are identical to those of the Directive, are valid on Union inland waterways.

However, the autonomy of EU law, which is the only source of validity for EU documents such as Union certificates of qualification, must not be compromised. In particular, it should be clear that, as regards Union inland waterways, the CCNR has no competence to regulate via the RPN matters related to the validity of Union documents because the RPN can only lay down requirements for Rhine documents (such as Rhine patents).

Moreover, the transitional provisions of the RPN require modifications to ensure full compatibility with those of Directive (EU) 2017/2397.

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 agreement⁴.

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.

4.1.2. Application to the present case

The CCNR is an international organisation. The act which the CCNR is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of EU legislation, namely Directive (EU) 2017/2397. This is because Directive (EU) 2017/2397 explicitly refers to the certificates of qualification, service record books or logbooks issued in accordance with the Regulations for Rhine Navigation Personnel.

Therefore, it is necessary to establish the position to be adopted on the Union's behalf within CCNR for the adoption the amended RPN. The procedural legal basis for the proposed decision is Article 218(9) TFEU.

⁴ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

⁵ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

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.

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

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Central Commission for the Navigation on the Rhine on the adoption of the revised Regulation for Rhine Navigation Personnel (RPN)

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) It is envisaged that in the coming months, the CCNR will adopt by written procedure a resolution that will amend the Regulation for Rhine Navigation Personnel (RPN) in order to take into account Directive (EU) 2017/2397 of the European Parliament and of the Council¹. For certificate of qualification, service record book or logbook issued in accordance with that Regulation to be valid on Union inland waterways, the RPN must lay down requirements that are identical to those of the Directive.
- (4) While Directive (EU) 2017/2397 accepts the co-existence of the legal framework of the Union and of that of the CCNR, the autonomy of Union law must not be compromised. The provisions of the RPN apply therefore without prejudice to the application of the Directive (EU) 2017/2397 where it lays down requirements on the same subject.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the CCNR, as the adoption of the revised RPN is capable of decisively influencing the content of Union law, namely Directive (EU) 2017/2397.
- (6) The proposed position of the Union is therefore to support the adoption of a version of the RPN that contains requirements identical to those of Directive (EU) 2017/2397, subject to the modifications set out in Annex.
- (7) The Union is not a member of the CCNR. The Union's position is to be expressed by the Member States of the Union that are members of the CCNR, acting jointly,

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).

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union where the Central Commission for the Navigation of the Rhine will adopt by written procedure a resolution amending the Regulation for Rhine Navigation Personnel shall be to agree on the adoption of an amended version of that Regulation that contains requirements identical to those of Directive (EU) 2017/2397, subject to the modifications set out in Annex.

Article 2

2. The position referred to in Article 1 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*