Council of the European Union

Brussels, 30 September 2020
(OR. en)

11147/20

**Interinstitutional File:**
**2020/0283(NLE)**

**MAR 116**
**TRANS 417**

**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2020) 632 final |
| 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(2020) 632 final.

Encl.: COM(2020) 632 final

EUROPEAN
COMMISSION

Brussels, 30.9.2020
COM(2020) 632 final

2020/0283 (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 13 October 2020 and at a meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) of 3 December 2020 in connection with the envisaged adoption of the European standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN standard 2021/1) together with and refers to the complementary Test Standard Inland AIS 2021/3.0.

## 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 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 attributions of the CCNR. The revised Convention for Navigation on the Rhine of 17 October 1868, also called “Mannheim Act” defines the legal framework governing the use of the Rhine as an inland waterway for navigation and lays down the attributions 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. 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.

## 2.2. The envisaged acts of the CESNI and CCNR

At its meeting of 13 October 2020, the CESNI is to adopt a new edition of the standard laying down Technical Requirements for Inland Navigation vessels (ES-TRIN standard 2021/1).

The first version of ES-TRIN (ES-TRIN standard 2015/1) 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 following amendment of ES-TRIN standard was adopted by CESNI:

1. ES-TRIN standard 2017/1 on 6 July 2017

2. ES-TRIN standard 2019/1 on 8 November 2018

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 2019 and 2020, CESNI experts have prepared the new edition of standard ES-TRIN 2021/1.

ES-TRIN 2021/1 incorporates various amendments in particular concerning the following areas:

- Safety clearance, freeboard and draught marks (Chapter 4);

- Reduction in the two sound level thresholds for a vessel both underway and stationary (Article 8.10);

- Portable fire extinguishers (Article 13.03(2) to (4));

- Lithium-ion accumulators (Article 10.11);

- Provision and use of individual acoustic protection equipment (Article 14.09(3));

- Doors in accommodation (Article 15.02(11));

- Electrical service room in passenger vessels (Article 19.07);

- Recreational craft equipment (Article 26.01(1)(h));

- Transitional provisions on:

  - fixed fire-extinguishing systems;

  - passenger vessel propulsion systems;

  - European and international standards for vessels that are operated only on waterways outside the Rhine;

- Liquefied natural gas (LNG) bunkering (Annex 8 (2.8);

- Clarifications regarding the validity of the Union certificate on the Rhine (ESI-1-1);

- Recognition of a special anchor with reduced mass (ESI-II-9);

- Updating of the cross-references to European and international standards;

- Numerous editorial corrections in the various language versions.

ES-TRIN standard 2021/1 will be updated together with and refers to the complementary Test Standard Inland AIS 2021/3.0. Test Standard Inland AIS 2021/3.0 has been prepared by CESNI experts during 2019 and 2020. This standard defines the operational and performance requirements, methods of test and required test results for Inland AIS Shipborne Equipment. The revised Test Standard Inland AIS 2021/3.0 reflects technical developments, as well as the new normative framework (Commission Implementing Regulation (EU) 2019/838 of 20 February 2019[1], ITU-R Recommendation M.1371-5[2] and edition 2018 of International Standard IEC 61993-2[3]).

At its meeting of 30 April 2020, CESNI decided to schedule the adoption of the ES-TRIN standard 2021/1 and the complementary Test Standard Inland AIS 2021/3.0 at the meeting on 13 October 2020. Before this meeting on 13 October 2020, it is expected that only formal and minor changes will be made to the draft standard. ES-TRIN standard 2021/1 will be published by means of a dedicated Website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

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/EC[4]**,** ES-TRIN standard 2021/1 will be incorporated into EU law.

References to the standards adopted by CESNI are included in Annex II of Directive (EU) 2016/1629. Pursuant to Article 31(1) of that Directive the Commission is empowered to adopt delegated acts to adapt Annex II to update, without undue delay, the reference to the most recent version of the ES-TRIN standard and to set the date of its application.

The CCNR will adopt a resolution amending the CCNR Regulations in order to include a reference to ES-TRIN standard 2021/1 and the complementary Test Standard Inland AIS 2021/3.0.

In order to ensure consistency of two existing legal regimes for technical requirements for inland navigation vessels (Rhine and EU), it is necessary to provide for the same standards. Both EU law and CCNR Regulations will be referring to ES-TRIN standard 2021/1 from 1 January 2022.

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1 Commission Implementing Regulation (EU) 2019/838 of 20 February 2019 on technical specifications for vessel tracking and tracing systems and repealing Regulation (EC) No 415/2007 (OJ L 138, 24.5.2019, p. 31).

2 Recommendation ITU-R M.1371-5 Technical characteristics for an automatic identification system using time division multiple access in the VHF maritime mobile frequency band.

3 International Standard IEC 61993-2:2018 Maritime navigation and radiocommunication equipment and systems - Automatic identification systems (AIS) - Part 2: Class A shipborne equipment of the automatic identification system (AIS) - Operational and performance requirements, methods of test and required test results.

4 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).

## 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 (27-28.06.2018; 26-27.09.2018; 20-21.11.2018; 5-6.03.2019; 25-26-27.06.2019; 24-25.09.2019; 19-20.11.2019; 25-26.02.2020) and
- Committee meeting (30.04.2020).

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

The proposed position of the Union is to adopt ES-TRIN standard 2021/1 as they maintain the highest level of safety in inland navigation, follow the technical evolution in this sector and ensure compatibility of requirements for vessels in Europe.

## 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 agreement[5].

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*'[6].

#### *4.1.2. Application to the present case*

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

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

[6] 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.

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 (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 1868[7].

Moreover, ES-TRIN standard 2021/1 and the complementary Test Standard Inland AIS 2021/3.0 are acts having legal effects for the purpose of the application of Article 218(9)TFEU since they are capable of decisively influencing the content of EU law. Indeed, 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.

In line with Article 22 of the Manheim Convention, the CCNR has the power to set up binding technical requirements for inland waterway vessels.

The Resolution to be adopted by the CCNR which will amend the CCNR Regulations to include a reference to the ES-TRIN standard 2021/1 and the complementary Test Standard Inland AIS 2021/3.0 will be a legally binding act with regard to the Parties of the CCNR.

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 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 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.

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

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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) 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 22 of the Convention, the Central Commission for the Navigation on the Rhine (CCNR) may adopt technical requirements for inland waterway vessels.

(3) 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 in the Union.

(4) 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.

(5) 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 support decisions harmonising the CCNR rules with those applied in the Union.

(6) CESNI is expected to adopt the European Standard laying down Technical requirements for Inland Navigations vessels (‘ES-TRIN’ standard’) 2021/1 and the complementary Test Standard Inland AIS 2021/3.0 at its meeting on 13 October 2020.

(7) ES-TRIN standard 2021/1 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. Test standard Inland AIS 2021/3.0 defines the operational and performance requirements, methods of test and required test results for Inland AIS Shipborne Equipment.

(8) It is appropriate to establish the position to be taken on the Union's behalf in the European Committee for drawing up standards in the field of inland navigation ('CESNI'), as the ES-TRIN standard 2021/1 will be capable of decisively influencing the content of Union law, namely Directive (EU) 2016/1629 of the European Parliament and of the Council.

(9) Annex II to Directive (EU) 2016/1629 of the European Parliament and of the Council refers to the technical requirements for craft as being those provided in ES-TRIN standard 2019/1. 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. Therefore, ES-TRIN standard 2021/1 will affect Directive (EU) 2016/1629.

(10) CCNR is expected to adopt a resolution which will amend the CNNR Regulations in order to include a reference to ES-TRIN standard 2021/1 and the complementary Test Standard Inland AIS 2021/3.0 at its meeting on 3 December 2020. Therefore, it is also appropriate to establish the position to be taken on the Union's behalf in the CCNR.

(11) 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 within the European Committee for drawing up Standards in the field of Inland Navigation (CESNI) on 13 October 2020 shall be to agree to the adoption of the European Standard laying down Technical Requirements for Inland Navigation vessels ('ES-TRIN standard') 2021/1 and the complementary Test Standard Inland AIS 2021/3.0.

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 2021/1 and the complementary Test Standard Inland AIS 2021/3.0.

*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*