Council of the European Union

Brussels, 11 March 2021
(OR. en)

6856/21

Interinstitutional File: 2021/0061(NLE)

TRANS 120
MAR 35

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	11 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 116 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 of the Rhine on the adoption of standards concerning harmonised river information services

Delegations will find attached document COM(2021) 116 final.

Encl.: COM(2021) 116 final

EUROPEAN
COMMISSION

Brussels, 11.3.2021
COM(2021) 116 final

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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 of the Rhine on the adoption of standards concerning harmonised river information services

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 15 April 2021 and at a meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) of 2 June 2021 in connection with the envisaged adoption of the European Standard for River Information Services (ES-RIS, Edition 2021/1).

2. CONTEXT OF THE PROPOSAL

2.1. The 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 attributions of the CCNR. 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 they 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 meeting of 15 April 2021, the CESNI is to adopt the first edition of the European Standard for River Information Services (ES-RIS, Edition 2021/1).

During 2019 and 2020, CESNI experts have prepared the draft ES-RIS 2021/1. It will be the first edition of RIS Standards by CESNI and establishes the baseline for future revisions of the ES-RIS. ES-RIS 2021/1 contains the technical specifications in the areas regulated by Directive 2005/44/EC of the European Parliament and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community[1] and the implementing acts adopted by the Commission under Article 5 of this Directive. The technical specifications contained in the implementing acts are based on the technical principles set out in Annex II of Directive 2005/44 and take account of work carried out in this field by relevant international organisations (e.g. CCNR, UNECE). No modifications of the content of the technical specifications were made in this first edition of the ES-RIS. The relevant standards are reproduced in the parts and annexes of ES-RIS, and not merely by making reference to documents published by the UNECE. In addition, ES-RIS 2021/1 contains the Test Standard Inland AIS 2021/3.0, which was adopted by CESNI on 13 October 2020 and was the subject matter of Council Decision (EU) 2020/1508[2].

ES-RIS 2021/1 covers the following technical standards for RIS:

Part I: Standard electronic chart display and information systems for inland navigation

Part II: Standard vessel tracking and tracing for inland navigation

Part III: Inland AIS shipborne equipment operational and performance requirements, methods of test and required test results (Test Standard Inland AIS)

Part IV: Standard electronic ship reporting in inland navigation

Part V: Standard notices to skippers

ES-RIS will be regularly updated taking account of the work of the CESNI working groups. Regular updates of ES-RIS are necessary to:

– maintain the high level of safety in inland navigation,

– follow the technical evolution,

– ensure compatibility with EU legal framework and international requirements.

At its meeting of 13 October 2020, the CESNI Committee decided to schedule the adoption of the ES-RIS 2021/1 at the meeting on 15 April 2021. Before this meeting on 15 April 2021, it is expected that only minor changes will be made to the draft standards. ES-RIS 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.

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1 Directive 2005/44/EC of the European Parliament and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community (OJ L 255, 30.9.2005, p. 152).

2 Council Decision (EU) 2020/1508 of 12 October 2020 on the position to be taken on behalf of the European Union within the European Committee for drawing up standards in the field of Inland navigation (CESNI) and within the Central Commission for the Navigation of the Rhine (CCNR) on the adoption of standards concerning technical requirements for inland waterway vessels (OJ L 345, 19.10.2020, p. 6).

The technical specifications contained in ES-RIS 2021/1 correspond to the technical specifications which have already been adopted within the legal framework of Directive 2005/44[3].

The CCNR will adopt a resolution amending the CCNR Regulations in order to include a reference to ES-RIS 2021/1.

In order to ensure consistency of two existing legal regimes for harmonised river information services (Rhine and EU), it is appropriate to align the relevant standards. Whereas the relevant EU law is already in force, CCNR Regulations will refer to ES-RIS 2021/1 from 25 April 2022. This date corresponds to the application deadline for Commission Implementing Regulation (EU) 2019/1744, which was the latest implementing act to enter into force under Directive 2005/44. A harmonization in the implementation schedule will thus be ensured.

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

The Union position is required considering that the subject matter of the envisaged acts concerns an area which is exclusive competence of the Union and it is necessary to ensure that EU interests are adequately taken into account when adopting decisions concerning the establishment of the standards for harmonised river information services (RIS). Pursuant to Article 3(2) TFEU, the European Union has exclusive external competence in the areas covered by the standards in question, since they are likely to affect common EU rules. Indeed, Member States shall set up RIS according to Article 4 of Directive 2005/44 in compliance with the technical specifications contained in the implementing acts adopted by the Commission under Article 5 of this Directive. The content of the draft standards in question is intended to be fully aligned with the standards currently incorporated in the binding EU technical specifications adopted under Directive 2005/44, and contained in the Implementing Regulations (EU) No 2018/2032, 2018/1973, 2019/838 and 2019/1744. Those standards relate to the technical specifications for hamonised river information services, which in the light of recital 3 of Directive 2005/44/EC, should be taken into account in the adoption of the binding technical specifications under Article 5 of that Directive.

The elaboration of the ES-RIS 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 standards at the level of the CESNI:

– working group meetings (13.-14.02.2019, 11.-12.12.2019, 01.-02.04.2020, 23.-26.06.2020, 02.-03.09.2020) and

[3] Commission Implementing Regulation (EU) 2018/2032 of 20 November 2018 amending Commission Regulation (EC) No 416/2007 concerning the technical specifications for Notices to Skippers (OJ L 332, 28.12.2018, p. 1–181);
Commission Implementing Regulation (EU) 2018/1973 of 7 December 2018 amending Implementing Regulation (EU) No 909/2013 on the technical specifications for the electronic chart display and information system for inland navigation (Inland ECDIS) referred to in Directive 2005/44/EC of the European Parliament and of the Council (OJ L 324, 19.12.2018, p. 1–44);
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. 31–69);
Commission Implementing Regulation (EU) 2019/1744 of 17 September 2019 on technical specifications for electronic ship reporting in inland navigation and repealing Regulation (EU) No 164/2010 (OJ L 273, 25.10.2019, p. 1–182).

– Committee meeting (13.10.2020).

These meetings allowed reaching an agreement at the level of experts concerning the standards for harmonised river information services.

The proposed position of the Union is to adopt ES-RIS 2021/1 as it facilitates the highest level of safety in inland navigation, follows the technical evolution in this sector and ensures compatibility of river information services 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[4].

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*'[5].

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 regulatory framework related to RIS technical specifications by referring 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 effect of the Rhine regulations for the CCNR Members derives from the provisions of the Mannheim Convention of 17 October 1868[6].

Moreover, ES-RIS 2021/1 with its future revisions 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. Article 5 of Directive 2005/44 empowers the Commission to adopt technical guidelines and technical specifications, in order to support RIS and to ensure the interoperability of these services. Recital 3 of the Directive states that for safety reasons and in the interests of pan-European harmonisation, the content of such common requirements and technical specifications should build on work carried out in this field by

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

5 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.

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

relevant international organisations, notably such as the Central Commission for Navigation on the Rhine (CCNR) and the United Nations Economic Commission for Europe (UNECE).

ES-RIS 2021/1 will contain technical specifications corresponding to those which have been, to date, adopted within the framework of Article 5 of Directive 2005/44. The technical specifications applicable to RIS under the Mannheim Convention will be aligned with those adopted within the framework of Directive 2005/44, and any future revision of ES-RIS 2021/1 will have direct impact on the Union's acquis in this area.

The Resolution to be adopted by the CCNR that will amend the CCNR Regulations to include a reference to the ES-RIS 2021/1, will be a legally binding act with regard to the Parties of the CCNR. However, it will not supplement or amend the institutional framework of the Mannheim Convention.

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 harmonised river information services.

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 act 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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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 of the Rhine on the adoption of standards concerning harmonised river information services

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, signed in Mannheim on 17 October 1868, amended by the Convention amending the Revised Convention for Navigation on the Rhine, signed in Strasbourg on 20 November 1963, entered into force of 14 April 1967.

(2) Pursuant to Article 1 of the Agreement, the Central Commission for the Navigation on the Rhine ('CCNR') may modify its regulatory framework related to river information services ('RIS') by referring to the standards adopted by the European Committee for drawing up standards in the field of inland navigation ('CESNI') and making those standards mandatory in the framework of the application of the Revised Convention for Rhine Navigation.

(3) 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) Action by the Union in the sector of inland navigation should aim to ensure uniformity in the development of technical specifications applied in the Union, as regards RIS in the Union.

(5) For efficient transport and safe navigation on the inland waterways, it is important that RIS are compatible and as harmonised as possible under different legal regimes in Europe.

(6) CESNI, during its meeting on 15 April 2021, is to adopt the European Standard – River Information Services ('ES-RIS') 2021/1.

(7) ES-RIS 2021/1 lays down uniform technical specifications and standards in order to support RIS and to ensure the interoperability of those services. The technical specifications and standards in question coincide with those, which adoption is required by Directive 2005/44/EC of the European Parliament and of the Council[7], in particular in the following areas: electronic chart display and information system for inland navigation, electronic ship reporting, notices to skippers, vessel tracking and tracing systems and compatibility of the equipment necessary for the use of RIS.

(8) Technical specifications for RIS are based on the technical principles set out in Annex II to Directive 2005/44/EC and take account of work carried out in this field by relevant international organisations.

(9) It is appropriate to establish the position to be taken on the Union's behalf in CESNI, as the ES-RIS 2021/1 will be capable of decisively influencing the content of Union law, namely the binding technical specifications adopted within the framework of Directive 2005/44/EC.

(10) The CCNR, during its plenary meeting on 2 June 2021, is to adopt a resolution which will amend the CCNR Regulations in order to include a reference to ES-RIS 2021/1. 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 in the European Committee for drawing up standards in the field of inland navigation ('CESNI') meeting on 15 April 2021 shall be to agree to the adoption of the European Standard – River Information Services ('ES-RIS') 2021/1.

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 on the Rhine ('CCNR') where river information services are decided upon shall be to support all proposals aligning the CCNR Regulations with those of ES-RIS 2021/1.

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.

[7] Directive 2005/44/EC of the European Parliament and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community (OJ L 255, 30.9.2005, p. 152).

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