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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	11 June 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 307 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the Conference of the Contracting Parties of the Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways (CDNI) on the adoption of the resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying between 12 and 50 passengers

Delegations will find attached document COM(2021) 307 final.

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COM(2021) 307 final

2021/0142 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the Conference of the Contracting Parties of the Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways (CDNI) on the adoption of the resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying between 12 and 50 passengers

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 a Conference of Contracting Parties of the Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways (CDNI) on the adoption of the resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying more than 12 passengers and passenger cabin vessels with more than 12 sleeping berths.

2. CONTEXT OF THE PROPOSAL

2.1. CDNI

The Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways (CDNI), signed on 9 September 1996 in Strasbourg defines the legal framework for the collection, deposit and reception of waste generated during navigating on the Rhine and other waterways. Following ratification by all the signatory states, the CDNI came into force on 1 November 2009. Five EU Member States (Belgium, France, Germany, Luxembourg and the Netherlands) and Switzerland are parties to the CDNI.

The Conference of Contracting Parties of the CDNI is the body responsible for monitoring the application of the provisions of the CDNI with regulatory competences for inland navigation matters on waste on the Rhine and other inland waterways and is composed by representatives of the CDNI's Contracting Parties. It meets annually. It adopts CDNI's resolutions. Each Contracting Party has one vote, and decisions are reached unanimously. These resolutions are legally binding on the Contracting Parties in accordance with Article 14 and 19 of the CDNI. The EU is not a Contracting Party of the CDNI.

2.2. The envisaged acts of the CDNI

At its meeting of 22 June 2021, a Conference of Contracting Parties of the CDNI is to adopt a resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying more than 12 and less than 50 passengers and passenger cabin vessels with more than 12 and less than 50 sleeping berths within CDNI's scope of application[1].

It refers to all inland waterways vessels carrying between 12 and 50 passengers and passenger cabin vessels with more than 12 and less than 50 sleeping berths, which were put in service after 30.12.2008. This issue concerns environmental and technical requirements for inland waterway vessels.

In accordance with Article 9.01(3) of Annex II to the CDNI the discharging of domestic wastewater is prohibited for:

(1) Cruise vessels with more than 50 sleeping berths and

[1] As defined in Annex 1 to the CDNI

(2) Passenger vessels permitted to carry more than 50 passengers.

The draft of the resolution extends this prohibition to inland waterways vessels carrying between 12 and 50 passengers and passenger cabin vessels with more than 12 and less than 50 sleeping berths. The prohibition of discharge of wastewater is linked to the obligation for the Contracting Parties of the CDNI to install reception stations for domestic wastewaters along waterways within their territories.

The provisions of the draft resolution would increase consistency with the technical requirements set by EU law.

The CDNI regulates vessel operation as regards wastewater discharges as a part of environmental protection. The technical requirements of inland navigation vessels are regulated by 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[2]. Directive (EU) 2016/1629 establishes the Union provisions concerning the technical requirements necessary to ensure the safety of craft navigating on the inland waterways consider the construction of a vessel's hull. Annex II of this Directive refers to the technical standards for inland navigation vessels (ES-TRIN) established by the European Committee for drawing up Standards in Inland Navigation (CESNI). A reference to the most current ES-TRIN 2019/1 is included in Annex II of Directive (EU) 2016/1629.

Under Article 19.14 of the ES-TRIN 2019/1, passenger vessels shall be equipped with collection tanks for domestic wastewater in accordance with (2) of this Article or appropriate on-board sewage treatment plants in accordance with Chapter 18 of the ES-TRIN 2019/1. This requirement applies to all passenger vessels carrying more than 12 passengers, but having regard to the following transitional provisions:

1. For cabin vessels with a maximum of 50 beds and for day trip vessels with a maximum of 50 passengers: The requirement for a tank or sewage-treatment plant does not apply to vessels that were already in service prior to 1.1.2006.

2. For cabin vessels with more than 50 beds: The requirement for a tank or sewage treatment plant already applies.

3. For vessels existing before 30.12.2008 and operated only beyond the Rhine, derogations may be accepted under article 29(1) of Directive (EU) 2016/1629.

The draft CDNI resolution addresses only vessels put in service after 30.12.2008 (Rhine or beyond) so it is fully compatible with ES-TRIN standard 2019/1 which already requires the equipment of collection tanks for domestic wastewater or appropriate on-board sewage treatment plants for these vessels.

The CDNI provisions take into account the environmental protection (prohibition of discharge of the domestic wastewaters into waterways) while ES-TRIN provides technical requirements for a vessel's construction and appropriate installation and equipment allowing to collect wastewaters.

[2] 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).

Both the CDNI and ES-TRIN set up the dates of the applicability of these provisions. As these provisions complement each other, it is necessary to ensure alignment of these dates to avoid inconsistency in regulations relevant for inland waterway vessels navigating on the Rhine.

The draft CDNI resolution is aligned with the requirements provided under Directive 2016/1629 and, thus, would increase consistency with the requirements set by EU law.

Moreover, Article 9.01, paragraph 4, of the draft CDNI resolution would exempt those vessels, which are exempted from the requirement to install equipment of collection tanks for domestic wastewater or appropriate on-board sewage treatment plants under Directive (UE) 2016/1629, from the corresponding prohibition of the discharge under the CDNI resolution.

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

The proposed position of the Union is to agree on the adoption of a resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying between 12 and 50 passengers.

There is no contradiction with EU legislation in this field. Additionally it highly supports environmental protection initiatives and objectives.

The CDNI regulates vessel operation as regards wastewater discharges as a part of environmental protection. Directive (EU) 2016/1629 establishes the Union provisions concerning the technical requirements necessary to ensure the safety of craft navigating on the inland waterways consider the construction of a vessel's hull, including issues related to the equipment of a vessel in collection tanks for domestic wastewater or appropriate on-board sewage treatment plants.

The proposed position of the Union is to agree on the adoption the resolution in subject as it increase consistency with the requirements set by EU law.

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[3].

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

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*'[4].

4.1.2. Application to the present case

The Conference of Contracting Parties of the CDNI is a body set up under an international agreement. The act which the Conference of Contracting Parties of the CDNI 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) 2016/1629. This is because the proposed act influences on the legislation related to technical requirements for inland waterway vessels as it provides the requirements related to the prohibition of discharge of wastewater and installing appropriate equipment on inland waterways vessels, while technical requirements for these vessels (including provisions for wastewater collection) are regulated by Directive (EU) 2016/1629.

Therefore, it is necessary to establish the position to be adopted on the Union's behalf within a Conference of Contracting Parties of the CDNI for the adoption resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying between 12 and 50 passengers.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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.

[4] 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.

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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 Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways (CDNI) of 9 September 1996, entered into force of 1 November 2009.

(2) Pursuant to Article 19 of the Convention, the Conference of Contracting Parties may amend the Convention and its annexes.

(3) Action by the Union in the sector of inland navigation should aim to ensure uniformity of technical requirements applied in the Union, as regards inland waterway vessels in the Union.

(4) The Conference of Contracting Parties of the CDNI, during its meeting on 22 June 2021, is to adopt a resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterways vessels carrying more than 12 passengers and passenger cabin vessels with more than 12 sleeping berths. The provisions of this resolution will obliged to install the appropriate equipment on board of vessels falling into scope of this resolution.

(5) The technical standard for inland navigation vessels (ES-TRIN 2019/1) adopted by the European Committee for drawing up Standards in Inland Navigation (‘CESNI’) on 8 November 2018 lays down uniform technical requirements necessary to ensure the safety of inland waterway vessels. It includes special provisions regarding specific categories of vessels such as passenger vessels, provisions regarding the equipment and installations of vessels, including wastewater collection and disposal facilities as well as instructions for the application of the technical standard.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of Contracting Parties of the CDNI, as the provisions of the resolution will be capable of decisively influencing the content of Union law, namely Directive (EU) 2016/1629 of the European Parliament and of the Council.

(7) The draft CDNI resolution should increase consistency with the requirements set by Union law, mainly in the area of the applicability dates for installing the appropriate equipment for collecting wastewaters on inland waterway vessels. Furthermore, the draft CDNI resolution highly supports environmental protection initiatives and objectives.

(8) The Union is not a member of the Conference of the Contracting Parties of the CDNI. The Union's position is to be expressed by the Member States of the Union that are members of the CDNI, acting jointly.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union, at the meeting on 22 June 2021, within the Conference of the Contracting Parties of the Convention on the collection, deposit and reception of waste generated during navigation on the Rhine and other inland waterways ('CDNI') shall be to agree to the adoption of the resolution aiming to extend the ban on the discharging of domestic wastewater by inland waterway vessels carrying between 12 and 50 passengers.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the Conference of the Contracting Parties of the CDNI, 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