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Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the European Committee for drawing up standards in the field of inland navigation (CESNI) and at the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) on the adoption of a standard concerning technical requirements for inland waterways vessels

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present Commission proposal concerns the establishment of the Union position at the meeting of the European Committee for drawing up standards in the field of inland navigation (CESNI) of 26 November 2015 and at the meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) in relation to a European standard laying down technical requirements for inland navigation vessels.

1.1. CESNI

The CCNR adopted at its Spring Plenary session on 3 June 2015 Resolution CCNR 2015-I-3 concerning the creation and functioning of a European Committee for drawing up standards in the field of inland navigation (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.

The parties to the CCNR (Germany, France, The Netherlands, Belgium and Switzerland) and the remaining Member States of the EU have voting rights on the basis of one vote per State. The EU is not a party to the CCNR or to 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.

The CESNI Committee adopts standards by unanimity of the votes of the CCNR and EU Member States present. In the absence of a consensus regarding the decision to put the adoption of standards on the agenda, CESNI decides by two-thirds majority of the votes of those Members present at the meeting. In a second step, the CESNI adopts standards by unanimity of the votes of the CCNR and EU Member States present. Once decided, standards are given a unique reference number and are published.

The CCNR has built up significant experience in establishing technical requirements for inland waterway vessels. Established in the framework of CCNR and with the participation of all EU Member States, CESNI therefore possesses the necessary expertise and geographical representativeness to draw up standards common to the entire network of inland waterways in the European Union.

1.2. The European standard laying down technical requirements for inland navigation vessels

The preparatory work on a uniform technical standard for inland waterway vessels to be applied both within the EU and the CCNR has started in the framework of the existing Joint Working Group which supports the implementation of the Directive of the European Parliament and of the Council 2006/87/EC laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC¹.

¹ OJ L 389, 30.12.2006, p.1.

The Joint Working Group has compared the existing technical requirements applicable under the EU legislation and in the framework of CCNR and developed uniform solutions in the areas where there are differences.

CESNI has continued the work of the Joint Working Group and intends to adopt a standard for technical requirements for inland waterway vessels.

This standard lays down the 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 vessel identification, model of certificates and register, transitional provisions as well as instructions for the application of the technical standard. At its meeting of 28 September 2015, CESNI decided unanimously to schedule the adoption of the European standard laying down technical requirements for inland navigation vessels at the meeting on 26 November 2015. The standard will be presented for final validation at the meeting organised under the auspices of CESNI on 6 November 2015 in view of its adoption shortly afterwards. It is expected that only formal and minor changes will be made to the text. The standard will be published by means of a dedicated Website (cesni.eu).

Following this adoption, the standard does not become binding. However, it will serve as a point of reference for the CCNR and other international organisations, in order to make it applicable in accordance with their respective legal frameworks.

Consequently, after adoption by CESNI, the CCNR will adapt its legislative framework (Rhine Vessel Inspection Regulations) with a view to referring to the CESNI standard and will decide to make this standard mandatory in the plenary session of the CCNR.

2. RELEVANT EU LEGISLATION AND EU COMPETENCE

Directive 2006/87/EC ensures that Union inland navigation certificates are issued for crafts which are compliant with the technical requirements for inland waterway vessels laid down in Annex II to this Directive for which equivalency with the technical requirements laid down in the application of the Revised Convention for Rhine Navigation has been established.

The certificates issued on the basis of Article 22 of the Revised Convention for Rhine Navigation and the Union inland navigation certificates are considered equivalent from the point of view of the technical requirements for vessels, in particular as the technical requirements within the EU legal framework have mainly been based upon the technical requirements of the Rhine Vessel Inspection Regulations.

Moreover, Article 20 of Directive 2006/87/EC provides that any amendment of Annex II based on technical progress or developments in this area arising from the work of international organisations, in particular CCNR, has to ensure that the certificates issued pursuant to the respective regulatory frameworks continue to be equivalent in order to guarantee an equivalent level of safety.

Therefore, any development derived from amendments of the technical requirements in the framework of the CCNR may affect Directive 2006/87/EC.

In addition, the Commission adopted on 10 September 2013 a proposal for a Directive laying down technical requirements for inland waterway vessels and repealing current Directive

2006/87/EC² as a part of the NAIADES II package³. As referred to in the recitals of this proposal, maintaining two separate set of rules for technical requirements for vessels under two different legal regimes (of the CCNR and of the EU) that operate according to their own rules and procedures is difficult and does not ensure legal certainty and safety.

The legislative procedure for the above-mentioned proposal has made substantial progress both in the Council and the European Parliament. A large consensus has emerged in this context as regards the need to streamline the technical rules applying to inland navigation and to avoid unnecessary duplications. The idea to incorporate in the future Directive a reference to a technical standard established under the auspices of the CCNR as a means to achieve these objectives has found a broad acceptance.

The European Parliament has adopted its position in first reading on 15 April 2014, broadly supporting the Commission proposal.

In the Council, the general approach was reached in the Transport Council of 11 June 2015 which restructured the text of the Commission proposal to increase clarity. In particular, the general approach foresees the replacement of Annex II of the proposal containing the technical requirements by a reference to a technical standard developed in the framework of CCNR.

The inter-institutional negotiations are still on-going with a view to reach a first reading agreement.

In conclusion, the adoption of the standard in the framework of CCNR is relevant also for the foreseeable future development of the *acquis* in this area.

3. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

The technical standard has been the subject of intensive preparation at the level of the EU and the CCNR. 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 Joint (EU-CCNR) Working Group: meetings of 17 to 20 February 2014, of 3 to 5 June 2014, of 9 to 11 September 2014, of 9 to 11 December 2014, of 17 to 19 February 2015, of 16 to 18 June 2015 and of 22 and 23 September 2015.
- At the level of the CCNR: meetings of the Inspection regulations Committee (RV) of 9 April 2014, 15 April 2014 and 22 April 2015, as well as in the meetings of the preparatory committee (PRE) of 11 June 2014, 8 October 2014, 3 December 2014, 25 March 2015 and 3 June 2015.
- At the level of the CESNI: the meeting of 28 September 2015.

Further technical meetings are planned on 21-22 October 2015 and on 6 November 2015.

² Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC, OJ L 389, 30.12.2006, p.1.

³ COM(2013) 622 final, 10.9.2013 - Proposal for a Directive of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC of the European Parliament and of the Council.

These meetings allow to reach an agreement at the level of experts concerning the technical requirements for inland waterway vessels.

4. THE NEED FOR A 218(9) TFEU DECISION

Article 218(9) TFEU establishes that *“The Council, on a proposal from the Commission (..), shall adopt a decision (...) 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.”*.

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 does not only fall into Union competence (safety of navigation) but what is more, the EU has exercised its competence through Directive 2006/87/EC 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 adapt 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 the legislation adopted by the EU legislature. As explained above, the framework applicable under the Revised Convention for Rhine Navigation has to be taken into account for any amendments to Directive 2006/87/EC. Moreover, it is envisaged that the EU legislation incorporates the Technical Requirements for Inland Navigation vessels adopted by CESNI.

Therefore the Council has to adopt a decision under Article 218(9) TFEU establishing the position to be adopted on the Union's behalf first within CESNI prior to the adoption of a standard on technical requirements for inland navigation vessels and second within the CCNR prior to the amendment of the Rhine Vessel Inspection Regulations.

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

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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) Action by the Union in the sector of inland navigation should aim to ensure uniformity in the development of technical requirements for inland waterway vessels to be applied in the Union.
- (2) The European Committee for drawing up standards in the field of inland navigation (CESNI) has been created on 3 June 2015 in the framework of the Central Commission for the Navigation on the Rhine (CCNR) in order to develop technical standards for inland waterways in various fields, in particular as regards vessels, information technology and crew.
- (3) CESNI is expected to adopt a standard concerning technical requirements for inland waterway vessels at its meeting of 26 November 2015. The plenary session of the CCNR will amend its legislative framework (Rhine Vessel Inspection Regulations) to refer to this standard and making this standard mandatory in the framework of the application of the Revised Convention for Rhine navigation.
- (4) This standard lays down the 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 vessel identification, model of certificates and register, transitional provisions as well as instructions for the application of the technical standard. Directive 2006/87/EC of the European Parliament and of the Council⁵ ensures that Union inland navigation certificates are issued for crafts which are compliant with the technical requirements for inland waterway vessels laid down in Annex II to this Directive for which equivalency with the technical requirements laid down in the application of the Revised Convention for Rhine Navigation has been established. Moreover, the Commission has adopted on 10 September 2013 a proposal

⁵ OJ L 389, 30.12.2006, p.1.

for a Directive of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC⁶, which foresees taking into account the developments arising in this field from the work of international organisations, in particular that of the CCNR in the application of technical requirements for inland waterway vessels.

- (5) Therefore, the standard concerning technical requirements for inland waterway vessels to be adopted under the auspices of the CCNR will affect Directive 2006/87/EC, as well as the foreseeable development of the *acquis* in this area.
- (6) The Union is neither a member of the CCNR nor of CESNI. It is therefore necessary for the Council to authorise the Member States to express the position of the Union as regards this standard in these bodies.

HAS ADOPTED THIS DECISION:

Article 1

- 1. The position to be adopted on behalf of the Union at the meeting of CESNI of 26 November 2015 shall be to agree to the adoption of the European standard laying down technical requirements for inland navigation vessels.
- 2. The position to be adopted on behalf of the Union at the meeting of the plenary session of the CCNR shall be to agree to amend the Rhine Vessel Inspection Regulations with a view to referring to the European standard laying down technical requirements for inland navigation vessels adopted by CESNI.

Article 2

- 1. The position of the Union as set out in Article 1 (1) shall be expressed by the Member States, which are members of CESNI, acting jointly in the interest of the Union.
- 2. The position of the Union as set out in Article 1 (2) shall be expressed by the Member States, which are members of CCNR, acting jointly in the interest of the Union.

Article 3

Minor changes to the position set out in Article 1 may be agreed without requiring the position to be amended.

Article 4

This Decision shall enter into force on the day of its adoption.

⁶ COM (2013) 622 final.

Done at Brussels,

For the Council
The President