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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 professional qualifications in inland navigation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Council 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') on 11 April 2024 and in the plenary session of the Central Commission for the Navigation of the Rhine ('CCNR') on 13 June 2024 in connection with the envisaged adoption of updated European Standard for Qualifications in Inland Navigation (ES-QIN).

2. CONTEXT OF THE PROPOSAL

2.1. The CCNR and CESNI

The 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 of the Rhine, signed on 17 October 1868 in Mannheim and amended on 14 April 1967, defines the legal framework governing the use of the Rhine as an inland waterway for navigation and lays down the attributions of the CCNR. It continues the Rhine regime established by the Congress of Vienna in 1815. For decision making, CCNR Member States convene twice a year in plenary meetings. 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 CESNI¹. Its mission includes the adoption of technical standards in inland navigation, 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 EU and CCNR Member States' experts. These have voting rights on the basis of one vote per state. But CESNI also integrates the EU and international institutions as well as expertise in its works. The EU may always participate in the work of CESNI without voting rights, along with international organisations whose mission covers the areas concerned by CESNI. Next to these participation rights, CESNI can invite expertise (individual experts, classifications societies, etc.). The CESNI plenary finalises the standards which have been agreed on expert level.

The EU and the CCNR provide for regulations in the context of professional qualifications in inland navigation, namely Directive (EU) 2017/2397² and the Regulations for Rhine Navigation Personnel (RPN)³. Article 10(2) of Directive (EU) 2017/2397 recognises documents of qualification which are issued in accordance with the RPN if the requirements for issuance are identical to those of the said Directive. Both legal regimes refer to the standards of CESNI.

¹ Resolution 2015-I-3, CC/R (15) 1, p.1.

² 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).

³ Regulations for Rhine Navigation Personnel, Resolution 2022-I-9, CC/R (22) 2, p. 38 and Annex.

2.2. The envisaged acts of the CESNI and the CCNR

Firstly, CESNI is to adopt the new edition of its European Standard for Qualifications in Inland Navigation (ES-QIN 2024/1) during its plenary meeting on 11 April 2024. The ES-QIN is regularly updated to:

- maintain the high level of safety in inland navigation,
- follow the technical evolution (ex. digital skills),
- ensure compatibility with EU legal framework.

The update correspondingly concerns the following areas:

- additions to strengthen certain management level competences for sailing on inland waterways with a maritime character;
- updated references to ES-TRIN (European Standard laying down technical requirements for inland navigation vessels);
- updated references to ES-RIS (European Standard for River Information Services);
- harmonisation of terminology with the Commission Implementing Regulation (EU) 2020/182 and editorial clarifications.

In accordance with Directive (EU) 2017/2397, the ES-QIN 2024/1 will be incorporated into EU law. Pursuant to Article 32 and 34 of that Directive, the Commission shall reference CESNI in delegated and implementing acts, provided that:

those standards are available and up-to-date;

those standards comply with any applicable requirements set out in the Annexes;

Union interests are not compromised by changes in the decision-making process of CESNI.

Currently, the said Directive refers to the ES-QIN 2019/1. Article 9 of the Rules of Procedure of CESNI allow the adoption of standards only after a decision in accordance with Article 218(9) TFEU was taken.

Secondly, the CCNR will also adopt a resolution amending its RPN. This will include a reference to the updated ES-QIN 2024/1. Both EU law and the RPN will be referring to ES-QIN 2024/1 from 1 January 2025.

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

The decision establishing the Union position is to agree to the adoption of ES-QIN 2024/1 in both organisations.

The ES-QIN 2024/1 is an update of the relevant standard which is today in force. The update has been the subject of intensive preparation at the level of the CESNI experts (CESNI/QP working group). The experts met on several occasions and reached an agreement at that level concerning the qualification requirements and the drafting of the respective standard.

As it is the purpose of the Directive (EU) 2017/2397 to ensure the safety of navigation, the protection of human life and the environment, the proposed position of the Union is to adopt ES-QIN 2024/1. The ES-QIN 2024/1 maintains the highest level of safety in inland navigation in line with the requirements of that Directive, follows the technical evolution in this sector and ensures compatibility of other up to date standards in inland navigation which form part of EU law.

A Union position is necessary as the Union enjoys exclusive external competence in accordance with Article 3(2) TFEU. Due to the said references to up-to-date standards of CESNI in Directive (EU) 2017/2397, the adoption in the CESNI plenary of the ES-QIN will

affect the common rules of the EU. Furthermore, qualifications issued in accordance with the RPN are only recognised in accordance with Article 10(2) of that Directive if requirements for issuance are identical to those of the Directive. In order to ensure consistency of two existing legal regimes for qualification requirements for inland navigation vessels in line with Directive (EU) 2017/2397, it is necessary to provide for the same standards.

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. 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 by an international agreement, namely the revised Convention for Navigation of the Rhine (Mannheim Act). The acts which CESNI and the CCNR are called upon to adopt constitute acts having legal effects.

On the one hand, the envisaged adoption of ES-QIN 2024/1 by the CESNI plenary is decisively influencing the content of EU legislation. While the adoption of ES-QIN by the CESNI plenary per se is not legally binding, Article 32 and 34 of Directive (EU) 2017/2397 establish a reference to up-to-date standards by CESNI, namely ES-QIN. So the Commission will need to adopt secondary legislation considering the ES-QIN 2024/1 in consideration of the further requirements of Article 32 and 34 of the said Directive.

On the other hand, the decision of the CCNR to refer to the ES-QIN 2024/1 in the RPN will be binding under international law on the Member States in accordance with Article 17, 46 of the revised Mannheim Act. It is also capable to decisively influence the content of Directive (EU) 2017/2397. In the endeavour to harmonise the legislation concerning professional qualifications in inland navigation (compare recital 40 of Directive 2017/2397), Article 10(2) of Directive (EU) 2017/2397 by law foresees the recognition of documents issued in accordance with the RPN which lay down requirements identical to those of the Directive. This will continue to be the case if the CCNR’s RPN refers to the same ES-QIN 2024/1 as the Directive does.

Therefore, the procedural legal basis for the proposed decision is 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, 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.

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 the 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 91(1) TFEU, in conjunction with Article 218(9) TFEU.

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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 revised Convention for Navigation of the Rhine of 17 October 1868, as amended by the revision of 20 October 1963, ('the Agreement') entered into force on 14 April 1967. The Agreement maintains the Central Commission for the Navigation of the Rhine ('CCNR') and the regime for inland navigation of the Rhine established in 1815. In the framework of the CCNR, the European Committee for drawing up standards in the field of inland navigation ('CESNI') was created on 3 June 2015 in order to develop technical standards for inland waterways in various fields, in particular as regards vessels, information technology and crew.
- (2) The adoption of standards by CESNI does not have direct legal effect, but Directive (EU) 2017/2397¹ refer to the latest CESNI standards on profession qualification, namely ES-QIN. The CCNR also refers to the latest standards in its Regulations for Rhine Navigation Personnel ('RPN')². Pursuant to Article 17, 46 of the Agreement, the Central Commission for the Navigation of the Rhine ('CCNR') may adopt binding resolutions establishing requirements for professional qualifications in inland navigation of the Rhine.
- (3) CESNI is to adopt the updated European Standard for Qualifications in Inland Navigation 2024/1 ('ES-QIN 2024/1') during its session on 11 April 2024. Following this adoption, the CCNR intends to adopt a resolution amending the RPN to refer to the ES-QIN 2024/1 in its plenary session on 13 June 2024. The ES-QIN 2024/1 replaces the ES-QIN 2019.
- (4) The ES-QIN 2024/1 provide for an update of the minimum harmonised European standards necessary to facilitate mobility, to ensure the safety of navigation and to ensure the protection of human life and the environment. These standards are now updated in terms of requirements for sailing on waters with maritime character. They

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 currently Regulations for Rhine Navigation Personnel, Resolution 2022-I-9, CC/R (22) 2, p. 38 and Annex

also include updated references to the ‘European Standard laying down Technical Requirements for Inland Navigation vessels’ and ‘European Standard for River Information Services’. Finally, editorial clarifications adding to legal certainty have been made.

- (5) It is appropriate to establish the position to be taken on the Union's behalf in the CESNI and the CCNR, as the ES-QIN 2024/1 will decisively influence the content of Union law. Article 32 and 34 Directive (EU) 2017/2397 require the Commission to adopt delegated and implementing acts which refer to the latest version of the CESNI standards of professional qualification provided that these standards are available and up-to-date, comply with the requirements set out in the Annexes of the said directive and Union interests are not compromised by changes in the decision-making process of CESNI. Furthermore, Article 10 of that Directive foresees the recognition of documents issued in accordance with the RPN which lay down requirements that are identical to those of the Directive.
- (6) To facilitate mobility, to ensure the safety of navigation and to ensure the protection of human life and the environment, it is important that the technical requirements for crew members are as harmonised as possible under different legal regimes in Europe. In particular, Member States which are also members of the CCNR, should be authorised to support decisions harmonising the CCNR rules with those applied in the Union.
- (7) The Union's position is to be expressed by the Member States of the Union that are members of the CESNI and CCNR, acting jointly in the interest of the Union.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf within CESNI with regard to the adoption of ES-QIN 2024/1 (CESNI (23) 21 rev.1) shall be to agree to their adoption.
2. The position to be taken on the Union's behalf within the CCNR shall be to support all proposals aligning the CCNR Regulations with ES-QIN 2024/1 (CESNI (23) 21 rev.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 CESNI acting jointly in the interest of the Union.
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 in the interest of the Union.

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.

Article 5

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

Done at Brussels,

*For the Council
The President*