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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 professional qualifications in inland navigation

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 8 November 2018 and at a meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) in connection with the envisaged adoption of the European standards for professional qualifications in inland navigation.

2. CONTEXT OF THE PROPOSAL

2.1. The revised Convention for Navigation on the Rhine

The revised Convention for Navigation on the Rhine of 17 October 1868 defines the legal framework governing the use of the Rhine as an inland waterway for navigation and lays down the attributions of the Central Commission for the Navigation on the Rhine (CCNR). The version of the Convention that is currently applicable was the outcome of the Convention of 20 November 1963, which entered into force on 14 April 1967.

Four Member States (Belgium, France, Germany and the Netherlands) and Switzerland are today parties to the revised Convention for Navigation on the Rhine.

2.2. CCNR and CESNI

The CCNR is an international organisation whose mission is to implement initiatives intended to guarantee freedom of navigation on the Rhine and to promote navigation on the Rhine. 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 which 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.

2.3. The envisaged act of the CESNI and CCNR

At its meeting of 8 November 2018, the CESNI is to adopt standards regarding professional qualifications in inland navigation ('the envisaged act').

These first CESNI standards for professional qualifications in inland navigation include the following standards:

- Standards for competences (cesni(18)_30, cesni(18)_31, cesni(18)_32, cesni(18)_33, cesni(18)_34, cesni(18)_35)

- Standards for practical examinations (cesni(18)_36, cesni(18)_37, cesni(18)_38, cesni(18)_39, cesni(18)_40)
- Standards for medical fitness (cesni(18)_29)
- Standards for the approval of simulators (cesni(18)_41, cesni(18)_42)

At its meeting of 10 April 2018, CESNI decided unanimously to schedule the adoption of the first CESNI standards for professional qualifications at the meeting on 8 November 2018. Before this meeting in November 2018, it is expected that only formal and minor changes will be made to the draft standards, including the possible consolidation of documents and their references. The standards will be published by means of a dedicated Website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

The CESNI standards are to be incorporated into EU law in accordance with 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/EC¹.

The Regulations for Rhine Navigation Personal will also refer to the standards delivered by CESNI from 17 January 2022 (deadline of transposition of Directive (EU) 2017/2397) as the regulatory regime of the CCNR for professional qualifications covered by Directive (EU) 2017/2397 needs to be fully aligned as of 17 January 2022 in order to ensure recognition of Rhine certificates on all EU inland waterways.

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 professional qualifications in inland navigation.

Under CESNI work programme 2016-2018, CESNI experts (CESNI/QP working group) have prepared the standards for professional qualifications. The work has started on the basis of the Commission proposal of 18 February 2016² and has been finalised on the basis of Directive (EU) 2017/2397.

The preparation of the standards for professional qualifications has been the subject of intensive preparation at the level of the CESNI experts (CESNI/QP working group). 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:

- CESNI expert meetings (26-28.01.2016; 22-24.06.2016; 5-9.09.2016; 16-17.11.2016; 31.01-02.02.2017; 10-12.05.2017; 12-13.06.2017; 06.07.2017; 05-07.09.2017; 12-13.09.2017; 15-16.11.2017; 30.01-01.02.2018.)
- Committee meeting (10.04.2018).

These meetings allowed an agreement to be reached at the level of experts concerning European standards for professional qualifications in inland navigation.

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 COM(2016) 82 final.

The Commission Expert Group on social issues in inland navigation has been kept informed on the progress of the work of CESNI in its meetings of 7 September 2017 and 1 February 2018.

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 agreement³.

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 CCNR is a body set up by an agreement, namely the revised Convention for Navigation on the Rhine. The CESNI is a body created by the CCNR.

The acts which the CESNI and CCNR are called upon to adopt constitute acts having legal effects. The envisaged acts are capable of decisively influencing the content of EU legislation, namely: 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.

This is because the Commission shall adopt delegated acts referred to in Article 17(1) and (4) (referring to standards for competence and standards for the practical examinations), Article 21(2) (referring to standards for the approval of simulators) and Article 23(6) (referring to standards for medical fitness) by 17 January 2020.

Recital (40) of the Directive (EU) 2017/2397 explains that the harmonisation of legislation in the field of professional qualifications in inland navigation in Europe is facilitated by the development of CESNI standards. In this context, Article 32 of the Directive states that these delegated acts shall make reference to standards established by CESNI, provided that:

- (a) those standards are available and up-to-date;
- (b) those standards comply with any applicable requirements set out in the Annexes of the Directive;
- (c) Union interests are not compromised by changes in the decision-making process of CESNI.

The Commission shall include the entire text of those standards in the delegated acts, and shall make the relevant reference.

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

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.

Annex II of the Directive sets the essential competence requirements and Annex III the essential requirements regarding medical fitness.

The envisaged acts do 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).

4.3. Conclusion

The legal basis of the proposed decision should be Article 91(1), 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 on the Rhine ('the Agreement') entered into force on 14 April 1967.
- (2) Pursuant to Article 46 of the Agreement, the Central Commission for the Navigation on the Rhine ('CCNR') may adopt resolutions, which are bindings for its members.
- (3) 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.
- (4) The CESNI, during its meeting on 8 November 2018, is to adopt standards on professional qualifications in inland navigation. A plenary session of the CCNR should also adopt the resolution that will incorporate these standards into the Regulations for Rhine Navigation Personnel.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the CESNI and the CCNR, as the standards on professional qualifications will decisively influence the content of Union law, namely Directive (EU) 2017/2397 of the European Parliament and of the Council⁵, and will have legal effect by virtue of the rules governing the CCNR when it will adopt these standards.
- (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 standards developed by CESNI for professional qualifications provide for the minimum harmonised European standards necessary to facilitate mobility, to ensure

⁵ 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).

the safety of navigation and to ensure the protection of human life and the environment. These standards include standards for competences, standards for the practical examinations, standards for medical fitness and standards for the approval of simulators.

- (8) Article 32 of Directive (EU) 2017/2397 with effect from 18 January 2022, refers directly to standards for professional qualifications as being those provided by CESNI. The Commission is empowered to include the entire text of those standards in delegated acts, make or update relevant references and set the date of application.
- (9) 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,

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 8 November 2018 shall be to agree to the adoption of the European Standards for professional qualifications in inland navigation with references (cesni (18)_29 to cesni (18)_42).
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 the European Standards for professional qualifications in inland navigation with references (cesni (18)_29 to cesni (18)_42) are decided upon, shall be to support all proposals aligning the requirements of the Regulations for the Rhine Navigation Personnel with those of the European Standards for professional qualifications in inland navigation.

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

1. 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*