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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 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 13 October 2022 and at a meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) of 8 December 2022 in connection with the envisaged adoption of the European Standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN 2023/1) and the European Standard for River Information Services (ES-RIS 2023/1).

2. CONTEXT OF THE PROPOSAL

2.1. 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 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 of the EU that 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 acts of CESNI and the CCNR

At its meeting of 13 October 2022, CESNI is to adopt a new edition of European Standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN 2023/1) and a new edition of the European Standard for River Information Services (ES-RIS 2023/1).

ES-TRIN

The first version of ES-TRIN (ES-TRIN 2015/1) was finalised by CESNI at its meeting of 28 September 2015. It was formally adopted by the CESNI Plenary meeting on 26 November 2015. The following amendments of ES-TRIN were adopted by CESNI:

1. ES-TRIN standard 2017/1 on 6 July 2017
2. ES-TRIN standard 2019/1 on 8 November 2018
3. ES-TRIN standard 2021/1 on 13 October 2020

ES-TRIN is regularly updated taking account of the work of CESNI working groups.

Regular up-date of ES TRIN is necessary to:

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

During 2021 and 2022, CESNI experts have prepared the new edition of ES-TRIN 2023/1.

ES-TRIN 2023/1 incorporates various amendments in particular concerning the following areas:

- Low flashpoint fuels and fuel cells,
- Life jackets,
- After-treatment systems,
- Waste water collection,
- Permanently installed firefighting systems for protecting objects,
- Passenger vessels,
- Recreational craft,
- Electric propulsion engines aft of the aft-peak bulkhead,
- Repair of engines in service,
- Retractable wheelhouses,
- Radar navigation installations and rate-of-turn indicators,
- Updating of references to the ES-RIS 2023/1,
- Special anchors with reduced mass.

At its meeting of 13 April 2022, CESNI decided to schedule the adoption of the ES-TRIN standard 2023/1 at the meeting on 13 October 2022. Before this meeting on 13 October 2022, it is expected that only formal and minor changes will be made to the draft standard. ES-TRIN standard 2023/1 will be published by means of a dedicated Website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

In accordance with 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/EC¹, ES-TRIN standard 2023/1 will be incorporated into EU law.

References to the standard adopted by CESNI are included in Annex II of Directive (EU) 2016/1629. Pursuant to Article 31(1) of that Directive the Commission is empowered to adopt delegated acts to adapt Annex II to update, without undue delay, the reference to the most recent version of the ES-TRIN standard and to set the date of its application.

¹ 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).

The CCNR will adopt a resolution amending the CCNR Regulations in order to include a reference to ES-TRIN standard 2023/1.

In order to ensure consistency of two existing legal regimes for technical requirements for inland navigation vessels (CCNR and EU), it is necessary to provide for the same standards. Both EU law and CCNR Regulations will be referring to ES-TRIN standard 2023/1 from 1 January 2024.

ES-RIS

The first version of ES-RIS (ES-RIS, Edition 2021/1) was formally adopted by the CESNI Plenary meeting on 15 April 2021, and 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 is 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.

During 2021 and 2022, CESNI experts have prepared the new edition of ES-RIS 2023/1. Various editorial improvements were made as a result of the translation process and the proofreading by the working groups. ES-RIS 2023/1 also underwent changes in formatting with a standardisation of its layout, general structure and annexes. The numbering of articles, chapters, tables, diagrams and charts was revised. It incorporates various improvements in its internal consistency and coherence between the different parts of the standard. This resulted into an updated overall structure of ES-RIS:

- Part I: Electronic chart display and information systems for inland navigation (Inland ECDIS)
- Part II: Vessel tracking and tracing for inland navigation
- Part III: Notices to skippers
- Part IV: Electronic ship reporting in inland navigation
- Part V: Inland ECDIS operational and performance requirements, methods of test and required test results (test part of Inland ECDIS)
- Part VI: Inland AIS shipborne equipment operational and performance requirements, methods of test and required test results (test part of Inland AIS)

At its meeting of 13 April 2022, CESNI decided to schedule the adoption of the ES-RIS 2023/1 at the meeting on 13 October 2022. Before this meeting on 13 October 2022, it is expected that only minor changes will be made to the draft standard. ES-RIS 2023/1 will be published by means of a dedicated Website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

In accordance with 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 Community², ES-RIS 2023/1 will be incorporated into EU law. This will be aligned with the currently ongoing revision of Directive 2005/44/EC, with an envisaged adoption in mid-2023.

The CCNR will adopt a resolution amending the CCNR Regulations in order to include a reference to ES-RIS 2023/1.

As ES-TRIN 2023/1 contains references to ES-RIS 2023/1, it is important that both standards are adopted by CESNI at its meeting on 13 October 2022.

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

The decision establishing the Union position is required since the acts to be adopted have legal effects for the purposes of Article 218(9) TFEU and particularly in view of their impact on an area of EU legislation which is subject to Union's exclusive competence pursuant to Article 3(2) TFEU.

The updates of the ES-TRIN and ES-RIS technical standards have 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 standard at the level of CESNI:

- working group meetings of CESNI/PT (23-24.06.2020, 22-23.09.2020, 17-18.11.2020, 2-3.03.2021, 23-24.06.2022, 16-17.11.2021 and 22-23.02.2022) and CESNI/TI (28.06-02.07.2021, 08-10.09.2021, 14-17.12.2021, 09-10.03.2022)
- Committee meeting (13.04.2022).

These meetings allowed reaching an agreement at the level of experts concerning the standards in inland navigation.

The proposed position of the Union is to adopt ES-TRIN 2023/1 and ES-RIS 2023/1 as they facilitate the highest level of safety in inland navigation, follow the technical evolution in this sector and ensure compatibility of requirements for vessels and 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 agreement³.

² 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).

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

Both CESNI and the CCNR are bodies set up under an international agreement, namely the revised Convention for Navigation on the Rhine (Mannheim Convention)⁵.

Although the rules adopted by CESNI are not binding per se, they will become binding on CCNR members once the CCNR modifies its legislative framework (Rhine vessel inspection regulations, Rhine police regulation) to refer to the standards adopted by CESNI and making these standards mandatory in the framework of the application of the Revised Convention for Rhine Navigation. Indeed, the binding character of such Regulation among the CCNR Members is established in the Mannheim Convention.

In line with Article 22 of the Mannheim Convention, the CCNR has the power to set up binding technical requirements for inland waterway vessels. The Resolution to be adopted by the CCNR which will amend the CCNR Regulations to include a reference to the ES-TRIN 2023/1 will thus be a legally binding act with regard to the Parties of the CCNR.

On the other hand and in line with Article 1 of the Mannheim Convention, the CCNR may modify its regulatory framework related to river information services (‘RIS’) in order to align the technical specifications applicable to RIS with the ES-RIS 2023/1. The Resolution to be adopted by the CCNR that will amend the CCNR Regulations to include a reference to the ES-RIS 2023/1 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, the envisaged acts will be binding under international law in accordance with Articles 1 and 22 of the Mannheim Convention.

Moreover, ES-TRIN 2023/1 and ES-RIS 2023/1 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 legislation, namely: Directive (EU) 2016/1629 and Directive 2005/44/EC.

As regards ES-TRIN, this is because the framework applicable under the Revised Convention for Rhine Navigation has to be taken into account for any amendments to Directive (EU) 2016/1629 and because the technical standards adopted by CESNI are included in Annex II of Directive (EU) 2016/1629 and have to be updated by means of delegated acts.

As regards to river information services, Article 5 of Directive 2005/44/EC 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 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 2023/1 will contain technical specifications that need to be adopted within the framework of Article 5 of Directive 2005/44/EC. This adoption process will be aligned with the currently ongoing revision of Directive 2005/44/EC, with an envisaged adoption mid-2023.

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.

⁵ Revised Convention for Rhine Navigation of 17 October 1868, as amended on 20 November 1963.

Therefore, it is necessary to establish the position to be adopted on the Union's behalf within CESNI and the CCNR for the adoption of standards on technical requirements for inland navigation vessels and 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 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.

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 in inland navigation

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 of 17 October 1868, amended by the Convention amending the Revised Convention for Navigation on the Rhine, adopted on 20 November 1963 entered into force of 14 April 1967 (the ‘Convention’).
- (2) Pursuant to Article 22 of the Convention, the Central Commission for the Navigation on the Rhine (‘CCNR’) may adopt technical requirements for inland waterway vessels.
- (3) Under the Convention, the 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 Convention.
- (4) 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.
- (5) Action by the Union in the sector of inland navigation should aim to ensure uniformity in the development of technical requirements and specifications applied in the Union, in particular as regards inland waterway vessels and RIS.
- (6) For the purpose of efficient transport and safe navigation on the inland waterways, it is important that the technical requirements for vessels and RIS are compatible and as harmonised as possible under different legal regimes in Europe. In particular, EU Member States which are also members of the CCNR should support decisions harmonising the CCNR rules with those applied in the Union.
- (7) CESNI, in its next meeting on 13 October 2022, is expected to adopt the European Standard laying down Technical requirements for Inland Navigations vessels 2023/1 (‘ES-TRIN 2023/1’) and the European Standard for River Information Services 2023/1 (‘ES-RIS 2023/1’).
- (8) ES-TRIN 2023/1 lays down 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 the automatic identification system equipment, provisions regarding vessel identification, a model of certificates and register, transitional provisions as well as instructions for the application of the technical standard.

- (9) Annex II to Directive (EU) 2016/1629 of the European Parliament and of the Council¹ refers to the technical requirements for craft as being those provided in ES-TRIN 2021/1. The Commission is empowered to update this reference in Annex II to the most recent version of the ES-TRIN standard and to set the date of its application. Therefore, ES-TRIN 2023/1 will affect Directive (EU) 2016/1629.
- (10) It is therefore appropriate to establish the position to be taken on the Union's behalf in the European Committee for drawing up standards in the field of inland navigation ('CESNI'), as the ES-TRIN standard 2023/1 will be capable of decisively influencing the content of Union law, namely Directive (EU) 2016/1629 of the European Parliament and of the Council.
- (11) ES-RIS 2023/1 lays down uniform technical specifications and standards in order to support RIS and ensure their interoperability. The technical specifications and standards under ES-RIS 2023/1 correspond to the technical specifications and standards for which adoption is required by Directive 2005/44/EC of the European Parliament and of the Council², 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.
- (12) 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.
- (13) It is therefore appropriate to establish the position to be taken on the Union's behalf within CESNI, as ES-RIS 2023/1 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.
- (14) The CCNR, in an upcoming plenary session, is expected to adopt resolutions that will amend the CCNR Regulations to include a reference to ES-TRIN 2023/1 and ES-RIS 2023/1. Such amendment will be binding under international law in accordance with Articles 1 and 22 of the Convention. Therefore, it is also appropriate to establish the position to be taken on the Union's behalf within the CCNR.
- (15) 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.
- (16) The proposed position of the Union is to adopt ES-TRIN 2023/1 and ES-RIS 2023/1 as they facilitate the highest level of safety in inland navigation, follow the technical

¹ 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).

² 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).

evolution in this sector and ensure compatibility of requirements for vessels and compatibility of river information services in Europe.

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-TRIN 2023/1 and ES-RIS 2023/1 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-TRIN 2023/1 and ES-RIS 2023/1.

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.
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.

Article 5

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

Done at Brussels,

*For the Council
The President*