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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 standards concerning technical requirements for inland waterways vessels and on amending the transitional provisions regarding those vessels

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal concerns the adoption of a Council Decision in application of Article 218(9) of the TFEU concerning the establishment of the Union position at the meeting of the European Committee for drawing up Standards in Inland Navigation (CESNI) of 6 July 2017 in relation to a European standard laying down technical requirements for inland navigation vessels and at the meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) of 31 May 2017 concerning the adoption of amendments to the transitional provisions regarding those vessels.

The decision – establishment of the Union position – is required for ensuring that the EU interests are adequately taken into account in the international instances when adopting regulation relating to the establishment of technical standards for inland navigation vessels. These standards are incorporated into EU law in particular under 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, which includes a direct reference to those standards.

1.1. CCNR and CESNI

The CCNR is an international organisation with regulatory competences for inland navigation transport matters in the Rhine. 4 Member States (Belgium, France, Germany and the Netherlands) and Switzerland are parties to the CCNR.

In 2015, the CCNR approved the creation and functioning of 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 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.

CESNI adopts standards by unanimity 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

In order to ensure consistency of two existing legal regimes for technical requirements for inland navigation vessels (Rhine and UE) it is necessary to provide the same standards. Both EU law and CCNR Regulation will be referring to standards delivered by CESNI to ES-TRIN 2017/01 from 7 October 2018 (deadline of transposition of Directive EU 2016/1629 and date of applicability of ES-TRIN 2017/01).

EU law and the regulatory regime of the Central Commission for Navigation in the Rhine (CCNR) for inland waterway vessels will be fully aligned as of 8 October 2018.

TRANSITIONAL PROVISIONS

In order to ensure progressive adaptation of the existing fleet to new technical requirements, the Rhine Vessel Inspection Regulations (RVIR) included transitional provisions. The transition period can have large variations (from some years to many decades).

Under the so-called moratorium of 12 June 2014, CCNR, prolonged the period by three years until 30 November 2017 for the following eight transitional provisions:

- Installation and measurement of the breather pipe and connections on the fuel tanks
- Maximum noise level for stationary vessels, maximum permissible sound pressure in the engine room, sound pressure generated by the vessel at the steering position, noise and vibration in living spaces
- Application of the European Standard to dinghies
- Manufacturer's plate, safety devices, shipboard documentation for cranes
- Escape routes on passenger vessels not via galleys
- Requirements on the propulsion system of passenger vessels
- Alarm system requirements for alerting passenger vessels' command and crew
- Requirements for electrical installations.

The intention of the CCNR was to use this period of three years to find permanent solutions to allow operators sufficient time to adopt them.

It should be noted that the expiry of the current transitional provisions under the RVIR takes place on 30 November 2017, eleven months before 7 October 2018 (the applicability of ES-TRIN in both - Directive 2016/1629 and CCNR framework).

These transitional provisions are also included in the ES-TRIN 2015/1 standard (to which Directive (EU) 2016/1629 refers to). The new ES-TRIN standard (2017/1) foresees to integrate provisions covering, where appropriate, all the transitional arrangements which are subject of the moratorium. For 2 of these transitional provisions, permanent solutions are included in ES-TRIN 2017/1 (installation and measurement of the breather pipe and connections on the fuel tanks and manufacturer's plate, safety devices, shipboard documentation for cranes) and for the other 6, ES-TRIN 2017/1 foresees a further extension of the applicability of the transitional provisions (until ES-TRIN 2019).

In order to bridge the gap between the end of the deadline of the moratorium and the date of application of the ES-TRIN,2017/1 standard, it is necessary to extend partly the moratorium in the RVIR at least until 6 October 2017 (date by which ES-TRIN 2017/1 would start applying).

The intention of the CCNR is to propose a change in the RVIR for these transitional provisions which are to expire on 30 November 2017.

The CCNR Member States, including four EU Member States, will be asked to approve in May 2017, at the occasion of the next plenary meeting of the CCNR, the extension these transitional provisions.

ES-TRIN

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

Council Decision (EU) 2015/2176[1] established the position to be adopted on behalf of the Union within the CESNI and at the plenary session of the CCNR on the adoption of ES-TRIN 2015.

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.

ES-TRIN is regularly updated taking account of the work of the 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. Wheelhouse, navigation equipment)
- ensure compatibility with EU legal framework (ex. Non-Road Mobile Machinery regulation)

During 2016, CESNI experts have prepared the standard ES-TRIN 2017/1.

ES-TRIN 2017/1 incorporates various amendments in particular concerning the following areas:

- elevating wheelhouse
- updating of the reference to various international standards
- emission of gaseous and particulate pollutants from engines
- electrical equipment and installations
- fire – fighting system
- manufacturer’s plate for cranes
- updating of the provisions on navigation and information equipment
- corrections of the transitional provisions on type approved equipment

At its meeting of 23 March 2017, CESNI decided unanimously to schedule the adoption of the updated version of ES-TRIN (ES-TRIN 2017/1) at the meeting on 6 July 2017. Before this meeting in July, it is expected that only formal and minor changes will be made to the draft ES-TRIN. The standards will be published by means of a dedicated Website (cesni.eu).

[1] OJ L 307, 25.11.2015, p.25

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, therefore also of the transitional arrangements provided therein, and may affect Directive 2006/87 /EC.

Moreover, on 16 September 2016, Directive (EU) 2016/1629 was published.

Member States to whom the directive is addressed have to adopt all necessary measures to comply with this Directive by 7 October 2018.

Annex II of the Directive contains the technical requirements applicable to craft. That Annex makes reference to ES-TRIN standard 2015/1. Moreover, Article 31 (1) of the Directive states that the Commission shall 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.

As stated above, CESNI, acting under the auspices of the CCNR and open to experts from all Member States, is responsible for drawing up the technical standards in the field of inland navigation to which reference should be made by the Union.

Recital (21) of the Directive 2016/1629 explains that CESNI has been established to facilitate harmonisation of technical standards applied in the inland waterway sector across Europe. The Directive further recalls that, in order to ensure a high level of safety and efficiency in inland navigation, to maintain the equivalence of the inland navigation certificates and to take into account scientific and technical progress and other developments in the sector, the reference to the applicable European Standard laying down Technical Requirements for Inland Navigation vessels (ES-TRIN standard) has to be kept up to date.

3. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

The update of the ES-TRIN technical standard has 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 the CESNI:

- working meetings (23-24.02.2016; 14-15.06.2016; 30-31.08.2016; 29-30.11.2016; 21-22.02.2017) and
- Committee meeting (23.03.2017).

These meetings allowed reaching 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 do not only fall into Union competence but what is more, the EU has exercised its competence through Directive 2006/87/EC and Directive (EU) 2016/1629 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 modifies 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 caracter of such Regulation among the CCNR Members is established in the Mannheim Convention of 17 October 1868[2].

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 EU law. As explained above, the framework applicable under the Revised Convention for Rhine Navigation has to be taken into account for any amendments to Directive (EU) 2006/87.

The Technical standards adopted by CESNI are included in Annex II of Directive 2016/1629 and have to be updated by means of delegated acts.

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 for the adoption of standards on technical requirements for inland navigation vessels and second within the CCNR for the amendment of the RVIR as regards the transitional arrangements.

[2] 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 applied in the Union, as regards inland waterway vessels to be applied in the Union.

(2) The plenary session of the CCNR is expected to prolong the relevant transitional provisions by 6 October 2018 at its meeting of 31 May 2017.

(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 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.

(4) CESNI is expected to adopt a standard concerning technical requirements for inland waterway vessels at its meeting of 6 July 2017.

(5) Eight specific technical requirements referred in the Rhine Vessel Inspection Regulations (RVIR) under the CCNR framework benefit at present from transitional provisions of the RVIR. The application of the transitional provisions of the RVIR has been prolonged following a moratorium. This prolongation is to expire on 30 November 2017. Directive 2006/87/EC of the European Parliament and of the Council 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 that Directive for which equivalence with the technical requirements laid down in the application of the Revised Convention for Rhine Navigation has been established. Moreover, these transitional arrangements are part of the ES-TRIN standard 2015/1, which applies in accordance with Annex II of Directive (EU) 2016/1629.

(6) In order to ensure continuity between the existing rules and requirements contained in the ES-TRIN standard 2017/1, it is proposed to prolong the application of the transitional provisions of the RVIR included in the moratorium by 6 October 2018.

(7) The standard to be adopted by CESNI 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 the Automatic Identification System equipment, provisions regarding vessel identification, model of certificates and register, transitional provisions as well as instructions for the application of the technical standard.

(8) Directive (EU) 2016/1629 of the European Parliament and of the Council[3] which will repeal Directive 2006/87/EC of the European Parliament and of the Council[4] with effect from 7 October 2018, in its Annex II directly refers to technical requirements for craft as being those provided in ES-TRIN standard 2015/1. 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.

(9) Therefore, the standard concerning technical requirements for inland waterway vessels to be adopted in CESNI will affect Directive (EU) 2016/1629.

(10) 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 the adoption of the standard concerning technical requirements for inland waterways vessels and the transitional provisions regarding those vessels.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on behalf of the European Union at the meeting of the plenary session of the Central Commission for the Navigation on the Rhine (CCNR) on 31 May 2017 shall be to agree to extend the moratorium of transitional provisions for the following 8 technical requirements at least until 6 October 2018:

   (a) Installation and measurement of the breather pipe and connections on the fuel tanks;

   (b) Maximum noise level for stationary vessels, maximum permissible sound pressure in the engine room, sound pressure generated by the vessel at the steering position, noise and vibration in living spaces;

   (c) Application of the European Standard to dinghies;

   (d) Manufacturer's plate, safety devices, shipboard documentation for cranes;

   (e) Escape routes on passenger vessels not via galleys;

   (f) Requirements on the propulsion system of passenger vessels;

   (g) Alarm system requirements for alerting passenger vessels' command and crew;

   (h) Requirements for electrical installations.

[3] 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).

[4] 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).

2. The position to be adopted on behalf of the European Union at the meeting of the European Committee for drawing up standards in the field of inland navigation (CESNI) of 6 July 2017 shall be to agree to the adoption of the European Standard laying down Technical Requirements for Inland Navigation vessels ('ES-TRIN standard') 2017/1.

Article 2

1. The position of the Union as set out in Article 1 (1) shall be expressed by the Member States, acting jointly in the interests 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 the CCNR, acting jointly in the interests of the Union.

Article 3

Minor 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