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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 Navigation on the Rhine on the adoption of models in the field of professional qualifications in inland navigation**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal is for a decision that sets out the position to be taken on the Union's behalf at the next meeting of the European Committee for Drawing up Standards in Inland Navigation (CESNI), which will take place on 15 October 2019, and at a future plenary session of the Central Commission for Navigation on the Rhine (CCNR) regarding the adoption of standards establishing models in the field of 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 sets out the responsibilities of the Central Commission for Navigation on the Rhine (CCNR). The version of the Convention that is currently applicable is the Convention of 20 November 1963, which entered into force on 14 April 1967.

At present, four EU Member States (Belgium, France, Germany and the Netherlands) and Switzerland are parties to the revised Convention for Navigation on the Rhine. The Union is not a party to the Convention.

#### **2.2. CCNR and CESNI**

The CCNR is an international organisation that implements initiatives aiming to guarantee freedom of navigation on the Rhine and promote navigation on the Rhine. Plenary meetings are held twice a year, attended by representatives of the CCNR Member States. The plenary meeting is the CCNR's decision-making body, it is where its resolutions are adopted. Each Member State has one vote, and decisions are reached unanimously. 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 work includes: (i) the adoption of technical standards in various fields, in particular as regards vessels, information technology and crew, (ii) the uniform interpretation of these standards and of the corresponding procedures, and (iii) discussion on the safety of navigation, environmental protection and other issues related to navigation.

CESNI is composed of experts representing Member States of the CCNR and of the EU. Each Member State represented in CESNI has one vote. The EU is not a member of CESNI, but may participate in its work without having voting rights, along with international organisations working in the areas covered by CESNI.

#### **2.3. The envisaged standards to be adopted by the CESNI and CCNR**

At its next meeting, planned for 15 October 2019, the CESNI plans to adopt standards for the models used in the field of professional qualifications in inland navigation ('the envisaged act').

This includes the following models:

- models for certificates of qualification as a boatmaster, a liquefied natural gas (LNG) expert and a passenger navigation expert (standards cesni(19)\_17);

- a service record book model (cesni(19)\_15);
- a logbook model (cesni(19)\_14);
- a model for a document combining certificates of qualification and the service record book (cesni (19)16);
- a model for a practical examination certificate (cesni(19)\_13).

At its meeting of 11 April 2019, CESNI unanimously decided to schedule the adoption of these standards for its next meeting, planned for 15 October 2019. It is expected that only minor changes will be made to the draft standards until then, including the possible consolidation of documents and their references.

From 17 January 2022, the Regulations for Rhine Navigation Personnel will also refer to the CESNI standards. This is the deadline for transposing Directive (EU) 2017/2397: the CCNR's regulatory regime for professional qualifications covered by this Directive must be fully aligned with the CESNI standards by this date in order to ensure the recognition of Rhine certificates on all EU inland waterways.

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

Directive (EU) 2017/2397<sup>1</sup> lays down the conditions and procedures for the certification of the qualifications of persons involved in the operation of a craft navigating on Union inland waterways, as well as for the recognition of such qualifications in the Member States. In order to ensure uniform conditions for the implementation of those provisions, Articles 11(3), 18(3) and 22(4) of Directive (EU) 2017/2397 confers implementing powers on the Commission with regard to the adoption of models for the issuing of Union certificates of qualification, practical examination certificates, service record books and logbooks. The CESNI standards establishing models in the field of professional qualifications in inland navigation are to be incorporated into EU law in accordance with Directive (EU) 2017/2397. The envisaged act is, therefore, liable to affect common rules of Union law or alter their scope, and, hence, the Union has exclusive external competence by virtue of the last limb of Article 3 (2) TFEU.

Therefore, establishment of the Union position is required in order to ensure that EU interests are adequately taken into account when the standards establishing models in the field of professional qualifications in inland navigation are adopted.

Under CESNI's work programme for 2016-2018, CESNI experts (in the CESNI working group on professional qualifications - CESNI/QP) have prepared the draft standards for professional qualifications.

CESNI experts held the following technical meetings to prepare the models:

- CESNI expert meetings on 1 February 2018, 23-24 May 2018, 4 September 2018, 6 November 2018 and 19 February 2019);
- CESNI Committee meeting on 11 April 2019.

The Commission's expert group on social issues in inland navigation was kept informed in its meetings of 7 September 2017, 21 September 2018 and 8 February 2019 on progress made by CESNI.

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<sup>1</sup> 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).

## 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 such a body or a party to the agreement<sup>2</sup>.

The concept of ‘*acts having legal effects*’ also applies to acts that have legal effects by virtue of the rules of international law governing the body in question. It also applies to 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*’<sup>3</sup>.

#### 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 must adopt implementing acts referred to in the following articles by 17 January 2020:

- Article 11(3) on models for Union certificates of qualification and for single documents combining Union certificates of qualification and service record books;
- Article 18(3) on models for practical examination certificates;
- Article 22(4) on models for service record books and logbooks.

Recital (40) of Directive (EU) 2017/2397 explains that CESNI standards would facilitate the harmonisation of legislation in the field of professional qualifications in inland navigation in Europe. Article 34 of the Directive states that the implementing acts listed above must make reference to standards established by CESNI if:

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

The Commission must include the entire text of the standards in the implementing acts.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

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<sup>2</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

<sup>3</sup> 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.

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 the one 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.

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 Navigation on the Rhine on the adoption of models in the field of professional qualifications 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 ('the Agreement') entered into force on 14 April 1967<sup>4</sup>.
- (2) Pursuant to Article 46 of the Agreement, the Central Commission for 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) At its next meeting, planned for 15 October 2019, the CESNI is to adopt standards on models in the field of professional qualifications in inland navigation. The CCNR is to also adopt a resolution that will incorporate these models 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 models in the field of professional qualifications will decisively influence the content of Union law, namely Directive (EU) 2017/2397 of the European Parliament and of the Council<sup>5</sup>.
- (6) To facilitate mobility and ensure safety, it is important that the models used by crew members for the purpose of ensuring the recognition of their qualifications are as harmonised as possible under the different legal regimes across Europe. In particular, EU Member States that are also members of the CCNR should be authorised to support decisions harmonising CCNR rules with those applied in the Union.

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<sup>4</sup> At present, four Member States (Belgium, France, Germany and the Netherlands) and Switzerland are parties to the revised Convention for Navigation on the Rhine. The Union is not a member of the CCNR.

<sup>5</sup> 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).

- (7) The models developed by CESNI for the certificates of qualifications, for the service record book, for the logbook, for a single document combining certificates of qualifications and the service record book and for practical examination certificates constitute a harmonisation of European standards.
- (8) The Union's position is to be expressed by those 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), at its next meeting, planned for 15 October 2019, which is to decide on the European standards for professional qualifications in inland navigation as set out in Annex I to this Decision, is to agree to the adoption of these standards.
2. The position to be taken on behalf of the Union at the meeting of the plenary session of the Central Commission for Navigation on the Rhine (CCNR), which is to decide on the European standards for professional qualifications in inland navigation as set out in Annex I to this Decision, is to support all proposals that align the requirements of the Regulations for 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*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*