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2024/0215 (NLE)

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 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 17 October 2024 and in the plenary session of the Central Commission for the Navigation of the Rhine ('CCNR') on 5 December 2024 in connection with the envisaged adoption of the European Standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN 2025/1) and the European Standard for River Information Services (ES-RIS 2025/1).

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 (Mannheim Convention). 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 CESNI[1]. 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 technical requirements for inland waterway vessels namely Directive (EU) 2016/1629[2] and the Rhine Vessel Inspection Regulations (RVIR) as well as for river information services (RIS) as defined in Directive 2005/44/EC[3] and Rhine Vessel Inspection Regulations. In relation to the technical requirements for inland waterway vessels both legal regimes refer to the standards of CESNI -

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

[2] 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).

[3] 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).

European Standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN).

In terms of RIS the European Standard for River Information Services (ES-RIS) will be incorporated into EU law. The proposal for a Directive of the European Parliament and of the Council amending Directive 2005/44/EC on harmonised river information services (RIS) on inland waterways in the Community (adopted by the Commission in January 2024) refers to ES-RIS as standard applicable in the EU. This approach has been confirmed by the Council at the TTE on 18 June 2024. Reference to the most current version of ES-RIS is also foreseen in the relevant Rhine Regulations.

2.2. The envisaged acts of the CESNI and the CCNR

At its meeting of 17 October 2024, the CESNI is to adopt a new edition of European Standards laying down Technical Requirements for Inland Navigation vessels (ES-TRIN 2025/1) and a new edition of the European Standard for River Information Services (ES-RIS 2025/1).

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 Committee 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
4. ES-TRIN standard 2023/1 on 13 October 2022

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 (e.g. fire-fighting systems, navigation equipment)
- - ensure compatibility with EU legal framework.

During 2023 and 2024, CESNI experts have prepared the new edition of ES-TRIN, ES-TRIN 2025/1.
ES-TRIN 2025/1 incorporates various amendments in particular concerning the following areas:

- Low flashpoint fuels, in particular storage and use of methanol,
- Marking of hazardous areas and labelling of fuels,
- Electric propulsion systems,
- Lithium-ion accumulators,
- Use of aluminium or fibre reinforced plastic for the construction of passenger vessels,
- Abandonment of engine parameter protocol,
- Recognition of field-testing exemption for engines,
- Filling connections and appropriate colour codes,
- Navigation and information equipment, in particular Inland AIS equipment,
- Sewage treatment plants,
- Elevating wheelhouses and transitional provisions for retractable wheelhouses,

- Automatic pressurised water sprinkler systems,
- Connecting pieces between anchor and chain,
- Sleeping cabins,
- Updating of references to the Regulations for Rhine Navigation Personnel, to the ES-RIS 2025/1 and to other international standards.

At its meeting of 11 April 2024, CESNI decided to schedule the adoption of the ES-TRIN standard 2025/1 at the meeting on 17 October 2024. Before this meeting on 17 October 2024, it is expected that only formal and minor changes will be made to the draft standard. ES-TRIN standard 2025/1 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/EC[4], ES-TRIN standard 2025/1 should 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.
Currently, the said Directive refers to the ES-TRIN 2023/1. 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.
The CCNR will also adopt a resolution amending its Rhine Regulations (in particular RVIR). This will include a reference to the updated ES-TRIN 2025/1.
Both EU law and CCNR Regulations will be referring to ES-TRIN standard 2025/1 from 1 January 2026.

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. The amended standards ES-RIS 2023/1 were adopted by CESNI on 13 October 2022.
During 2023 and 2024, CESNI experts have prepared the new edition of ES-RIS, ES-RIS 2025/1.
ES-RIS 2025/1 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.
ES-RIS 2025/1 incorporates various amendments in particular concerning the following areas:
- creation of Part 0, containing abbreviations, definitions, references to external documents
- set up standards for Aids to Navigation and amend relevant parts of ES-RIS
- renumbering of the annexes, particularly in the sections relating to:
    - Standard electronic chart display and information systems for inland navigation
    - Standard vessel tracking and tracing for inland navigation
    - Standard electronic ship reporting in inland navigation
    - Standard notices to skippers

[4] 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).

- providing of corrections and clarifications, but without modification on the content.

At its meeting of 11 April 2024, CESNI decided to schedule the adoption of the ES-RIS 2025/1 at the meeting on 17 October 2024. Before this meeting on 17 October 2024, it is expected that only minor changes will be made to the draft standard. ES-RIS 2025/1 will be published by means of a dedicated website (cesni.eu). All EU Member States have (protected) access to the above-mentioned draft standards.

The proposal for a Directive of the European Parliament and of the Council amending Directive 2005/44/EC on harmonised river information services (RIS) on inland waterways in the Community (adopted by the Commission in January 2024) refers to ES-RIS as standard applicable in the EU for river information services. An envisaged adoption by the colegislators is foreseen in mid-2025. Therefore, there is a need for the adoption of ES-RIS 2025/1 to incorporate it in Directive 2005/44/EC as the most current version of standards.

The CCNR will adopt a resolution amending the CCNR Regulations in order to include a reference to ES-RIS 2025/1.

As ES-TRIN 2025/1 contains references to ES-RIS 2025/1, it is important that both standards are adopted by CESNI at its meeting on 17 October 2024.

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 technical meetings have been carried out during the development of the standard at the level of the CESNI.

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 2025/1 and ES-RIS 2025/1 as they ensure 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 agreement[5].

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*'[6].

4.1.2. Application to the present case

Although the standards 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 (RVIR), Police Regulations for the Navigation of the Rhine (RPNR)) 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.

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 CCNR's resolutions. Each State has one vote, and decisions are reached unanimously. These resolutions are legally binding.

In line with Article 22 and 23 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 2025/1 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 2025/1. The Resolution to be adopted by the CCNR that will amend the CCNR Regulations to include a reference to the ES-RIS 2025/1 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 2025/1 and ES-RIS 2025/1 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 the ES-TRIN standard, this is because the framework applicable under the Mannheim Convention has to be taken into account in the context of Directive (EU) 2016/1629, because documents issued under the Rhine legal framework are recognised in accordance with Article 7 of Directive (EU) 2016/1629. Moreover, 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.

As regards to river information services, Article 5 of Directive 2005/44 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

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

6 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.

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 CCNR and the United Nations Economic Commission for Europe (UNECE). ES-RIS 2025/1 will contain technical specifications that need to be adopted within the framework of Article 5 of Directive 2005/44. This adoption process will be aligned with the currently ongoing process of adoption of directive amending Directive 2005/44/EC which directly refers to ES-RIS, as applicable standard. For the sake of a harmonised navigation regime on the Rhine, the decision on the ES-RIS in the CCNR should be to adopt the ES-RIS 2025/1, too.

Therefore, it is necessary to establish the position to be adopted on the Union's behalf within CESNI and 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 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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Proposal for a

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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 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 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) Directive (EU) 2016/1629[1] refers to the latest CESNI standards on technical requirements for inland waterway vessels, namely ES-TRIN. The CCNR also refers to the latest standards in its Rhine Regulations. Pursuant to Article 22 and 23 of the Agreement, the CCNR may adopt binding resolutions establishing technical requirements for inland waterway vessels in inland navigation of the Rhine. The standards to be adopted by CESNI will therefore be binding once the relevant binding resolutions of the CCNR make a reference to these standards.

(3) Under the Agreement, 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 Agreement.

(4) CESNI is to adopt the updated European Standard laying down Technical requirements for Inland Navigations vessels 2025/1 ('ES-TRIN 2025/1') and the European Standard for River Information Services 2025/1 ('ES-RIS 2025/1') during its session on 17 October 2024. Following this adoption, the CCNR intends to adopt a resolution amending the Rhine Regulations to refer to the ES-TRIN 2025/1 and ES-

[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).

RIS 2025/1 in its plenary session on 5 December 2024. The ES-TRIN 2025/1 and ES-RIS 2025/1 replace ES-TRIN 2023/1 and ES-RIS 2023/1 accordingly.

(5) ES-TRIN 2025/1 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.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the CESNI and the CCNR, as the ES-TRIN 2025/1 will decisively influence the content of Union law. Article 31 and 32 of Directive (EU) 2016/1629 require the Commission to adopt delegated acts which refer to the latest version of the ES-TRIN standard and to set the date of its application. provided that Union interests are not compromised by changes in the decision-making process of CESNI.

(7) ES-RIS 2025/1 lays down uniform technical specifications and standards in order to support RIS and ensure their interoperability. The technical specifications and standards under ES-RIS 2025/1 correspond to the technical specifications and standards for which adoption is required by Directive 2005/44/EC of the European Parliament and of the Council[7], 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.

(8) 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.

(9) It is therefore appropriate to establish the position to be taken on the Union’s behalf within CESNI, as ES-RIS 2025/1 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.

(10) 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 2025/1 and ES-RIS 2025/1. 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.

(11) To 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 it is important that the technical requirements for vessels and river information services 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.

(12) 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.

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[7] 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).

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 2025/1 and ES-RIS 2025/1 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 2025/1 and ES-RIS 2025/1.

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