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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Inland Water Transport  
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**EXCHANGE OF INFORMATION ON MEASURES AIMED AT  
PROMOTING TRANSPORT BY INLAND WATERWAYS**

Inventory of existing legislative obstacles that hamper the establishment of a  
harmonized and competitive pan-European inland navigation market,  
and proposals for solutions to overcome them

Note by the secretariat

At its forty-fourth session, the Working Party set up a Group of Volunteers with a view to preparing, as a follow-up to the Rotterdam Conference on Inland Waterway Transportation, an “Inventory of existing legislative obstacles that hamper the establishment of a harmonized and competitive Pan-European inland navigation market together with recommendations as to how to overcome those obstacles” (TRANS/SC.3/155, para. 14(iv)). The following delegations took part in the work of the Group: Hungary, the Netherlands, Romania, Russian Federation, Ukraine, European Commission (EC), United Nations Economic Commission for Europe (UNECE), European Conference of Ministers of Transport (ECMT), Central Commission for the Navigation of the Rhine (CCNR) and the Danube Commission (DC).

Reproduced below is the text of the Inventory containing a succinct analysis of existing legislative obstacles that hamper the establishment of a harmonized and competitive Pan-European inland navigation market and proposals on possible solutions to the problems identified, finalized by the Chairman of the Group of Volunteers, Mr. C. Hofhuizen (Netherlands) as a result of six meetings of the Group.

**Inventory of existing legislative obstacles that hamper the establishment of a harmonized and competitive pan-European inland navigation market, and proposals for solutions to overcome them (Rotterdam declaration, item 13)**

**I. Generalities<sup>1</sup>**

1. **Definition of “legislative obstacles”**. Normally, an economic system that is based on market principles and that is fully integrated will be characterized by a defined geographical area and, for those who legally belong to the system, by a state of the law which ensures:

equality of treatment of economic actors, irrespective of their nationality or their place of residence;

equal access conditions for all those who wish to enter the market (including equal access to infrastructures and services);

equality of rules governing production processes throughout the geographical area covered by the market in question;

sanctioning of unfair competition practices (including control of private cartels and of state aid);

freedom of contracts and pricing;

freedom of movement of goods, persons, services and capital throughout the geographical area covered by the market system.

Wherever in the case of inland water transport operations on the pan-European inland waterway network these conditions are not, or not completely met, one may speak of ‘legislative obstacles’ as referred to in the Rotterdam Declaration.

2. **Secondary aspects of an open transport market**. The functioning of the transport market and the IWT market, in particular, is embedded in the global framework of rules, mechanisms and to a certain extent also traditions of the geographically defined political entity taken into consideration. This can be a single country or a number of countries, governed by common or comparable rules and principles which all have their own so-called “level playing field”. The question of the harmonization and opening of the markets can, therefore, not be seen separately from the global functioning of the specific market concerned. In particular, the mobile character of the transport and the services provided by its operators oblige, in this context, to take also into consideration the indirect effects on the existing situation of an opening to third parties. More precisely, due to the absence of an external competition on a specific market, the application of many of the measures in this respect has been limited to the authorized players. As third parties were not entitled to operate in this market, these measures do not apply to these

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<sup>1</sup> The text of Section I “Generalities” and the description of legislative obstacles reproduced in Sections II to XI supersede the provisional text on this subject reproduced in document TRANS/SC.3/2003/8, dated 8 July 2003.

parties and therefore contain real loopholes once the access is granted. Without supplementary arrangements, this would possibly give way to unfair competition between the original players and the newcomers.

3. The most obvious examples can be found in the area of the working conditions, the social security and the wage levels, including the mechanisms and instruments for their application. These are in most cases of a national nature, i.e. they apply to the nationals of a country (private persons or legally established enterprises) and can only be enforced by the authorities of that country.

4. In the case that the transport services are carried out in a third country, the authorities of the flag State lack the possibility of a repressive intervention. In addition, the authorities of the country or countries where the services are carried out lack the power to intervene, either on the basis of their own regulations, which might not be fit for application to foreign operators, or on those of the country of origin. As long as the respective national regimes concerned do not deviate much, this evident loophole in the legal regimes does not necessarily lead to unfair competition. All depends on the degree of the differences between the regimes and their effects on the commercial exploitation.

5. The question of how far integration of markets presupposes the harmonization of conditions of employment, remuneration levels, social security regimes, fiscal regimes and tax levels will not be further explored here. Suffice to note that, within economies like those of the European Union and the United States of America, which are generally considered as integrated common markets, differences in social security and fiscal regimes, labour costs and tax levels continue to exist. Still, it would be realistic to recognize that differences of this kind may play a role in discussions on the mutual opening of markets.

6. **Geographical scope.** For the moment, it is proposed to examine in this report the situation of inland water transport on the interconnected waterways of the Member States of the Danube Commission (DC), of the Member States of the Central Commission for the Navigation of the Rhine (CCNR), and of Poland and the Czech Republic. The inland waterways of those countries form a more or less coherent whole; at present only maritime routes connect them to the waterways of other countries. The exceptions are, of course, the Russian Federation and Ukraine mainland: member States of the DC, but not connected by inland waterways to the other countries just mentioned. The development of transport by sea-river vessels would encourage the integration of these last two countries into a single European transport system.

7. This choice is made here only for practical reasons and must not be understood to imply that other countries could not, in future, become participants in the establishment of an integrated pan-European inland navigation market. In view of the growing awareness of policymakers that the potentialities of fluvio-maritime transport and of multimodal transport have to be more fully developed, the number of countries having an interest in inland waterways policy will most

probably grow. If the notion “inland navigation market” is broadened to include sea-river transport, all 39 countries connected by inland waterways and/or short-sea routes to the E waterway network as defined in the AGN Agreement have, at least potentially, an interest in the pan-European harmonization of legislation governing this market.

8. **Types of legislative obstacles.** Experience suggests that legislative obstacles in European inland waterway transport are, or may be, of a number of kinds:

restrictions on transport rights of ‘foreign’ vessels;

restrictions on access to and use of inland waterways and ports;

existence of different regimes for technical regulations for vessels (ship’s certificates);

existence of different regimes for boatmaster’s licences, the size and composition of crews, and working and rest hours;

restrictions on the freedom of pricing and contracting;

restrictions on the freedom of movement of inland water transport workers;

restrictions on the right of establishment.

Many legal obstacles have their origin in international legal instruments, but in some cases national law is also a source of such obstacles.

9. **Point of departure of the search for solutions.** As will be seen, the legislative obstacles identified below are, to a certain extent, the consequence of the coexistence in Europe of different international regimes governing inland water transport (the Treaty establishing the European Community, the Belgrade Convention, the Act of Mannheim) and of a corresponding variety of rule-making institutions: the European Community lawmaking machinery, the Danube Commission and the CCNR, to which could be added the UNECE. It would, therefore, not be illogical to try to eliminate the legislative obstacles by replacing the current variety of regimes and rule-makers with one single regime, covering the whole of the European inland waterway network, and providing for one single rule-making institution, to which the functions of the existing rule-makers would be transferred. One possible way to do this could be the creation of a new Pan-European governmental organization, in which all countries connected to the European inland waterway network would be invited to participate. A variant of this, formally different but similar in its effects, would be the setting up of a system of multilateral Pan-European agreements, dealing with the various aspects of inland water transport, and each having its procedures and institutional arrangements for adopting and amending the regulations falling within its scope. A possible third approach would be to make the European Community the pivot of international rule-making for inland waterway transport. It is true that this would be a less than perfect solution, since it is probable that not all European inland navigation countries will eventually become Community Member States; but that could be solved by means of agreements

between these non-EU countries and the Community on matters as mutual market access, harmonization of regulations and reciprocal recognition of board documents.

10. But such sweeping reorganizations of the institutional landscape do not stand a large chance of being realized. It will be very difficult, if not impossible, to achieve the consensus needed for such institutional shifts. It is highly improbable that the European Community will waive its legislative competence in the field of inland water transport in favour of a new independent international organization, or will allow its Member States to become Contracting Parties to Pan-European Conventions dealing with subjects that fall within its competence. On the other hand, giving the leading part in rule-making for inland water transport to the European Community might well seem a less attractive proposition to the inland navigation countries; in the European Community inland water transport represents a minority interest, which receives and will continue to receive relatively little attention within the framework of its common transport policy.

11. It is, therefore, proposed here that the search for solutions be based on the assumption that the institutional landscape should remain as it is, without changes or shifts in formal competences. This may not be the most audacious approach, but it may have the merit of being realistic. It means that the solutions proposed here will be in terms of cooperation and coordination between the existing institutions.

## II. Restrictions on transport rights of “foreign” vessels.

### Description

12. By “transport right” is meant here the right for vessels flying certain flags to carry out transport operations within or through a given territory or between certain territories, rights such as “cabotage”, “transit” and “third country traffic” (*Drittlandverkehr*). A number of international legal instruments contain restrictions on these rights.

13. The **Act of Mannheim** (article 4) reserves the right to carry out transport operations between two points situated on the Rhine and its tributaries to vessels belonging to Rhine navigation, i.e. having a so-called “genuine link” with one of the CCNR Member States or with a Member State of the European Union. Vessels not belonging to Rhine navigation may carry out such transport only under conditions laid down by the CCNR. So far, the CCNR has never specified such conditions in general terms. As a result, vessels from countries other than the EU-countries and Switzerland can only transport goods and persons between ports situated on the Rhine, the Moselle, the Main or the Neckar, if the CCNR authorizes them to do so on a case-by-case basis. Article 4 of the Act of Mannheim further specifies that the conditions for the transport of freight and persons by vessels not belonging to Rhine navigation, between a point situated on the Rhine and its tributaries and a point situated in the territory of a third state shall be laid down in agreements between this third state and the Rhine riparian state concerned. A number of such bilateral agreements exist; for further details, see below. However, not all non-EU countries that

are linked by inland waterways to the Rhine have concluded such agreements with all Rhine riparian countries. In cases where no agreement exists, it is up to the Rhine riparian state concerned to decide whether it will authorize such transports to and from its Rhine ports or not.

14. In the **Belgrade Convention (1948)**, the principle of freedom of navigation for vessels of all states applies only to frontier-crossing traffic (article 1). Vessels flying foreign flags may thus be excluded from national transport (“cabotage”) within Danube countries; this seems to be the general practice.

15. The legal situation on the Danube with respect to transport rights, however, is subject to different interpretations and needs clarification. The differences notably concern the interpretation of the principle of freedom of navigation. Some Parties to the Belgrade Convention hold the view that this principle only grants the right to sail on the river, not the right to carry out transport operations; others contend that it also implies this latter right.

16. **EU legislation** Regulations (EEC) 3921/91 and (EC) 1356/96 explicitly authorize EU inland water transport operators, who can prove a “genuine link” with a member State, to carry out national transport operations *within* EU countries other than their country of establishment (“cabotage”), and to carry out transport operations *between* EU countries. Whether individual EU Member States are entitled to admit non-EU carriers to their national and intra-Community transport markets (e.g. by issuing permits) remains a moot point. From the standpoint of EU law, it could be argued that this does not belong to the competence of individual Member States, but to that of the Community.

17. It must be noted, however, that on the Rhine and on the Danube these two regulations do not adversely affect the transport rights of vessels from non-EU countries that are Contracting Parties to the Act of Mannheim, respectively the Belgrade Convention. Article 3 of Regulation 1356/96 (on access to transport between EU Member States) says: “This Regulation shall not affect the rights of third-country operators under the Revised Convention for the Navigation of the Rhine (Mannheim Convention), the Convention on Navigation on the Danube (Belgrade Convention) or the rights arising from the European Community’s international obligations”. This means that non-EU vessels are not excluded from transport operations between Danube riparian states belonging to the EU to the extent that the Belgrade Convention grants them the right to carry these out; and that, on the Rhine, Swiss vessels remain entitled under the Act of Mannheim to carry out transport operations between the Netherlands, Germany and France, as well as between the Rhine and Belgium.

18. Regulation 3921/91 (on national cabotage within EU Member States) does not contain such a safeguard clause with respect to the Belgrade Convention, but it has, by its nature, no consequences for the market access situation on the Danube for non-EU vessels: everywhere on that river they remain excluded from national cabotage as, under the Danube Convention, they were before the adoption of the regulation. On the EU section of the Danube, however, vessels

belonging to EU Member States have under this regulation access to national cabotage, notwithstanding the Belgrade Convention. Thus, the situation with respect to national cabotage on the Danube is doubly incompatible with the notion of an integrated pan-European transport market: there is a difference in regime between the EU and the non-EU part of the river, and on the EU part there is inequality of rights between EU and non-EU vessels.

19. Regulation 3921/91 has no consequences for the right of Swiss vessels to participate in national cabotage on the Rhine, as it contains a safeguard clause in favour of rights existing under the Act of Mannheim.

20. **Bilateral inland water transport agreements**. There exist bilateral agreements on inland water transport between Germany on the one hand and Poland, the Czech Republic, Slovakia, Hungary, Bulgaria, Romania and Ukraine on the other. Poland, the Czech Republic, Slovakia, Hungary and Romania also have such agreements with the Netherlands. There are similar agreements between Luxembourg and the Czech Republic, and between Romania and France.

21. These bilateral agreements generally contain provisions on transport rights, some of which restrict market access.

- Cabotage as a rule is only allowed in exceptional cases, or is not allowed at all.
- Bilateral traffic between both countries concerned is in some cases freely accessible for vessels of both parties, but in other cases subject to a system of cargo sharing on a 50/50 basis; it may also be subject to tariff regulations laying down minimum freight rates. Participation by vessels of third countries in bilateral traffic is generally discouraged.
- Third country traffic (*Drittlandverkehr*) generally is only possible if the authorities of the Contracting Party where the goods are loaded or unloaded grant a permit; a permit of the third country where the goods are to be loaded or unloaded may also be required.

22. Nearly all bilateral inland water transport agreements are with countries that are candidates for membership of the European Union. As soon as these countries accede to the EU many provisions in the bilateral agreements concerned will automatically cease to be applicable, since application of the restrictions they contain to EU vessels would be contrary to EU law. In the interest of legal certainty these bilateral agreements should then either be revised or denounced.

### **Possible solutions**

23. **The Act of Mannheim**. The restriction contained in article 4 paragraph 1 (in the version of Additional Protocol No. 2) of the Act of Mannheim – which reserves the right to carry out transport operations between points situated on the Rhine and its tributaries to vessels belonging to Rhine navigation, i.e. having a so-called “genuine link” with one of the CCNR or EU Member States – is clearly incompatible with the idea of an integrated Pan-European inland water

transport market as postulated by the Rotterdam Declaration. It is true that this restriction will lose much of its meaning by the EU enlargement, as it will become inapplicable to the vessels belonging to the new EU Member States; but it will remain in force with respect to the vessels of European countries remaining, for the time being or permanently, outside the EU.

24. In principle, only the CCNR Member States can remove this obstacle or make it less restrictive. The most radical solution would be the repeal of article 4, paragraph 1, a change in the Act of Mannheim which would require formal ratification by each of the CCNR's five Member States. The effect of this change would be the opening up of Rhine cabotage to the vessels of all nations.

25. A less liberal solution, but one probably politically more acceptable and therefore recommended here, would be to let Additional Protocol No. 2 stand as it is, but nevertheless to open up Rhine cabotage to European vessels. Additional Protocol No. 2 entitles the CCNR to specify in general terms the conditions under which vessels not belonging to Rhine navigation may participate in Rhine cabotage. The CCNR could, for instance, lay down as a general rule that European vessels not belonging to Rhine navigation (in practical terms the vessels of those Danube riparian states which are not EU Members) may carry out Rhine cabotage operations provided that a) they can prove a "genuine link" with their country of origin, and b) that this country of origin in its turn grants the right of cabotage on its territory to vessels belonging to Rhine navigation.

26. If looked at from the point of view of EU law, it might be questioned to what extent the CCNR Member States belonging to the EU are entitled to take part in a CCNR decision to open up Rhine cabotage. However that may be, it would certainly be advisable for the CCNR to act in close concert with the European Community on this issue.

27. **Belgrade Convention** Currently preparations are being made for a diplomatic conference for the revision of the Belgrade Convention. This revision may provide an opportunity to clarify the situation as to the nature of "freedom of navigation". It should be made clear, on the one hand, that the only meaning of this notion which is consistent with a free market system is the one that allows inland water transport operators to conclude transport contracts (and to carry them out) with any firm or natural person who wants to use their services, irrespective of the nationality or the place of establishment of the former and the latter, and irrespective of the places of loading and unloading.

28. On the other hand, given the text proposals now on the table, it seems unlikely that this revision will change the existing right of riparian states to reserve transport within their territories for the vessels of their own fleet; so national cabotage will probably remain closed, as far as the revised Convention is concerned.

29. **EU legislation** The problems concerning national cabotage rights on the Danube that were noted above could be solved within the framework of negotiations on accession of the



European Community as a Contracting Party to the (revised) Belgrade Convention. The European Commission already has formally recommended to the EU Council to give it a mandate for negotiations to that effect with the Member States of the Danube Commission. Moreover, the text proposals for the revision of the Belgrade Convention elaborated so far contain a provision allowing “regional economic integration organizations” (read “the European Community”) to become Contracting Parties to the revised Convention. So it is not unlikely that this is eventually going to happen. The European Community and the Danube countries could use the negotiations on the Community’s accession to grant market access to national cabotage on the Danube to each other’s vessels, thus establishing the unity of the regime in this respect on the whole length of the river. Further, it is assumed here that the revised Belgrade Convention will grant the right to carry out international transport operations on the Danube to at least all Contracting Parties’ vessels. If so, the Community’s accession to the revised Convention will entail opening up transport between the EU Contracting Parties to the vessels of the non-EU Contracting Parties.

30. This would solve the problem of the EU restrictions on transport rights only as far as the Danube is concerned. Elsewhere on the navigable network of the European Community, the two above-mentioned regulations would fully remain in force. The EU could eliminate this problem by a renewed use of a mandate for negotiations between the EU and third countries on mutual inland navigation market access, given by the Council to the European Commission in 1992. At the time, the Commission negotiated a draft for a multilateral agreement with Poland, the Czech Republic and Slovakia. In 1997, however, the EU Council would not accept this draft, as it contained some provisions which could be read as infringements of the Act of Mannheim, in particular the Additional Protocol No. 2 to that Act. As the European Commission refused to reopen negotiations, the matter ended there. But the negotiating mandate was never formally withdrawn or abandoned, so presumably it could be used again – if so desired after a re-examination of its scope - to negotiate arrangements for mutual market access between the EU as such and non-EU inland navigation countries connected to the E waterway network. If the CCNR is prepared to admit the vessels of these non-EU countries to Rhine cabotage, a repetition of the 1997 stalemate could be avoided. Preferably the CCNR and the European Commission should act in parallel with respect to market opening.

31. **Bilateral agreements**. The negotiation mandate referred to above could also be used to remove existing limitations on transport rights contained in bilateral inland water transport agreements between EU Member States and non-EU European countries, as agreements concluded by the EU itself would overrule the agreements concluded by its Member States. The 1997 draft multilateral agreement just mentioned would already have had this effect if it had been adopted by the Council. The Contracting Parties to existing bilateral agreements could also agree themselves to remove restrictions on market access contained in them, but this might be considered as contrary to European Community law, since external competence on inland navigation market access no longer belongs to individual Member States.

### **III. Restrictions on access to and use of inland waterways and ports.**

#### **Description**

32. Restrictions of this type (to be distinguished from restrictions on market access) occur, as far as known, only in Germany and the Russian Federation. Foreign vessels, whether loaded or unloaded, are not allowed to enter the inland waterways of the Russian Federation without special governmental authorization. Navigation on the federal inland waterways of Germany by foreign vessels also is subject to a navigation authorization ("*Erlaubnis zur Fahrt*"). The obligation to have such an authorization does not apply to EU vessels. The authorization is granted to vessels of States, with which Germany has concluded bilateral inland navigation agreements, within the terms of those agreements.

#### **Possible solutions**

33. The Agreement on partnership and cooperation, concluded in 1994 between the European Communities and their Member States on one side and the Russian Federation on the other, could serve as a framework for at least partially eliminating these obstacles. Article 39, paragraph 3 lays down that the two parties "not later than 31 December 1996, will conduct negotiations on the stage-by-stage opening of the inland waterways of each Party to the nationals and shipping companies of the other Party, in respect of the freedom to provide international sea-river services". Apparently these negotiations have had positive results; the Russian Federation has announced that it envisages to open its inland waterways for international traffic: (i) by 2007 – from the port of Azov (at the estuary of the river Don) to Astrakhan (at the estuary of the river Volga); and (ii) by 2010 – from Volgograd on the river Volga to St Petersburg. In view of the reciprocity foreseen in the article just quoted, it may be assumed that Russian sea-river vessels in turn will gain access to the German inland waterways, if they do not already have it. On the basis of a similar Agreement on partnership and cooperation between the European Communities and their Member States and Ukraine, Ukrainian and Community sea-river vessels already have access to each other's inland waterways for international transport; the same goes for the Republic of Moldova.

### **IV. The existence of different regimes for technical requirements for vessels (ship's certificates).**

#### **Description**

34. With regard to technical requirements for inland navigation vessels, three main regimes can be distinguished at the pan-European level.

35. On the **Rhine**, vessels currently are only admitted when they carry a Rhine ship's certificate, based on the CCNR Regulation on the Survey of Rhine Vessels (French acronym: RVBR) and issued by the competent authorities of one of the member States of the CCNR. This CCNR certificate is recognized by the EU as valid for navigation on all Community waterways

(with the exception of some large waterways, mostly river estuaries, where vessels must meet additional technical requirements).

36. The technical regime on the **EU waterways** outside the Rhine is based on EU Directive 82/714/EEC, which establishes a Community ship's certificate. This Directive is currently under revision to bring its technical rules into line with those of the RVBR. The Community ship's certificate is not recognized as valid for Rhine navigation, as the wording of the Act of Mannheim until recently made such a recognition impossible; but the CCNR Member States have adopted a 7<sup>th</sup> Additional Protocol to the Act of Mannheim which gives the CCNR the competence to recognize the ship's certificates of the EU and of third countries, if the regulations on the basis of which they are issued are equivalent to those established by the CCNR and in accordance with procedures ensuring their effective implementation. This Additional Protocol has entered into force on 1 December 2004.

37. **Danube**. The DC has issued Recommendations on Technical Requirements for Inland Navigation Vessels, based on resolution No. 17 of the UNECE, but it is as yet not known to what extent the DC Member States have actually copied these Recommendations in their national legislation. So, strictly legally, each riparian State has its own technical rules and ship's certificate. However, as the riparian States recognize each other's ship's certificates, this situation poses no problems to shipping on this river. Certain Danube States also recognize the Rhine ship's certificate, as do Poland and the Czech Republic (who, of course, also have their own national technical regimes and certificates).

38. The **UNECE** resolution No. 17 just referred to, which lays down Recommendations on Technical Requirements for Inland Navigation Vessels, is a result of efforts of its member Governments regarding the approximation of their national and international (CCNR) requirements in this field with a view to possible reciprocal recognition of ship's certificates issued on the basis of the Recommendations or their recognition through a simplified inspection procedure. The Recommendations are currently under revision and are supposed to be in line generally with both the draft EU legislation on the matter and CCNR regulations in force, as far as the waterways of navigational zone 3 are concerned. The recommendatory character of this set of requirements makes it necessary for Governments seeking the recognition of their ship's certificates to reflect in them that the vessel has been inspected and found in compliance with the UNECE provisions in question. Otherwise, the Governments will have to prove that their national legislation is in full accordance with the provisions of the UNECE Recommendations.

**Possible solutions**

39. The difficulties connected to the coexistence of various technical regimes can largely be solved by a combination of three elements: 1) the application of the Additional Protocol No. 7 to the Act of Mannheim, 2) the current revision of EU Directive 82/714/EEC laying down technical requirements for inland navigation vessels, and 3) the EU enlargement process. The Additional Protocol No.7, as noted above, offers a basis for the CCNR to recognize Community ship's certificates and ship's certificates issued by non-EU States (and boatmaster's licenses as well) as valid for navigation on the Rhine, provided their underlying regulations are equivalent to those in force on the Rhine. The current revision of EU Directive 82/714/EEC is intended to provide the EU with technical rules equivalent to those in force on the Rhine, and with a simple and rapid procedure for amending those technical rules to keep them in line with the Rhine technical regime through future changes. Moreover, the European Commission and the CCNR in March 2003 concluded a cooperation agreement providing for regular consultations between both institutions with a view to harmonizing EU and CCNR legislation and ensure their parallel development. If all goes well, the CCNR will be able to recognize the Community ship's certificate as valid for the Rhine. The EU enlargement process will increase the number of states entitled to issue Community certificates to their vessels so as to include eventually most European countries with inland navigation interests; so, if the CCNR recognizes the Community certificate, these countries' vessels will be able to obtain ship's certificates giving access to the Rhine from their own national authorities. As noted earlier, the Rhine ship's certificate is already recognized under Directive 82/714/EEC as valid for navigation on all Community waterways (with the exception of some large waterways, where additional technical requirements must be met); the revision of the Directive will not affect this. In this scenario, the differences between the Community and the Rhine ship's certificates would practically cease to exist; both would give admittance to the same waterways.

40. A remaining problem in this situation would be the relationship between the Rhine/Community area and those European inland navigation countries (apart from Switzerland) which would stay, for an indeterminate period or forever, outside the EU. This could be solved by using article 18 of Directive 82/714/EEC (unchanged by the revision proposal), which offers EU Member States the possibility of recognizing (presumably on a reciprocal basis) ship's certificates of non-EU countries, so long as the Community itself has not entered into agreements with those countries providing for mutual recognition of these documents; or, alternatively, by the conclusion of such agreements by the Community itself.

41. It could be added that mutual recognition of ship's certificates between the Danube and the Rhine will become easier if the planned revision of the Belgrade Convention will provide the Danube Commission with the power to prescribe binding regulations on, among other things, technical requirements for vessels, in lieu of the mere authority to issue recommendations to its Member States it now has. The Danube Commission "new style" will then be in a position to establish a unique Danube ship's certificate and to decide on the recognition of the Community

and Rhine ship's certificates on the non-EU part of the Danube – as the CCNR could decide on the recognition of this Danube certificate as valid for the Rhine.

42. To ensure a common, non-discriminatory approach to the consideration of applications for recognition of ship's certificates, a harmonized procedure for such consideration could be elaborated and agreed upon by UNECE, EU and River Commissions. This same procedure could also be used for the assessment of applications for the recognition of boatmaster's licenses (see next paragraph). But whether the reciprocal recognition results from the application of such a harmonized procedure or from agreements between the Community and third countries, it would be important to avoid (1) a reduction of safety standards on Community waterways or (2) a discrimination of vessels from EU Member States which cannot receive a Community certificate for technical reasons but would be eligible for recognition if they came from a third country.

#### **V. The existence of different regimes for boatmaster's licences.**

##### **Description**

43. The situation with respect to boatmaster's licences is comparable to that with respect to vessel's certificates. On the **Rhine**, boatmasters must have a licence based on the Rhine Patent Regulation of the CCNR, which is issued by the competent authorities of one of its member States. This "Rhine Patent" is recognized by the EU as valid for the navigation on all Community waterways (with the exception of some rivers, where the member State concerned may require special knowledge of local navigational conditions and/or special experience in navigating the river in question). It is also recognized by most Danube countries, be it that in many of them the patent holder must meet some additional requirements as to knowledge of local navigational conditions.

44. The **EU** has its own legislation on this subject. Directive 91/672/EEC provides for the mutual recognition by the member States of each other's boatmen's licences. Directive 96/50/EC lays down harmonized minimum conditions for the issuing of national licences (essentially an examination programme). An EU boatmaster's licence in the proper sense of the word does not exist to date, but the European Commission is considering further harmonization in this field. Boatmaster's licences based on Directive 96/50/EC currently are not valid for Rhine navigation, but the 7<sup>th</sup> Additional Protocol to the Act of Mannheim mentioned before will make possible for the CCNR to recognize them, as well as the licenses of non-EU countries.

45. The Rhine Patent Regulation (article 3.05) allows the CCNR to recognize boatmaster's licences of other countries than its member States as "equivalent"; to date it has done so with Austrian, Czech, Hungarian and Polish licences. Holders of such recognized licences can obtain the Rhine Patent through a simplified examination, the only subjects of which are knowledge of the Regulations in force on the Rhine and of the navigational conditions on that river.

46. On the **Danube**, the regime concerning boatmaster's licences is similar to that with respect to ship's certificates. The DC has adopted Recommendations on the Establishment of Boatmaster's Licences on the Danube. It is uncertain to what extent the DC Member States actually follow those Recommendations, but they recognize each other's national licences.

47. Within **UNECE** were elaborated and adopted in 1992 the Recommendations on Minimum Requirements for the Issuance of Boatmasters' Licenses in Inland Navigation with a view to their Reciprocal Recognition for International Traffic.

### **Possible solutions**

48. As in the case of ship's certificates, the enlargement of the EU will reduce the problems resulting from the existence of three different regimes for boatmaster's licenses: the Rhine Patent Regulation for the Rhine, EU Directive 96/50/EC for the Community waterways outside the Rhine, and the regime prevailing on the non-EU sector of the Danube; but it will not solve them. In the absence of the possibility of unification of the regime by means of a Pan-European Agreement, the solution will have to be found in a mutual recognition of licenses between these three regimes. This, in turn, presupposes harmonization between the underlying regulations, and some form of cooperation to keep them equivalent in case of amendment.

49. Cooperation with a view to harmonizing regulations already exists between the European Commission and the CCNR, as noted above; and the Danube Commission and the CCNR have, in principle, agreed to set up a common working group to harmonize their legislation on boatmaster's licenses, with a view to future reciprocal recognition of these documents between the Rhine and the Danube. The functioning of these two "interfaces" could, in principle, result in harmonization of the EU, Danube and Rhine regulations on this subject, and could serve to keep them harmonised through future modifications. But it might be laborious work to keep them coordinated. So an alternative solution could be to invite UNECE to update its resolution No. 31 on Minimum Requirements for the Issuance of Boatmaster's Licenses, in collaboration with the European Commission and the two River Commissions, to make it serve as a common standard on which all three Community, Danube and Rhine legislations could be based. On the basis of Additional Protocol No. 7 to the Act of Mannheim mentioned before, the CCNR will be able to recognize boatmaster's licenses issued by both EU and non-EU states as valid for the Rhine. The recognition of Rhine patents and Community boatmaster's licenses as valid for the non-EU sector of the Danube will formally have to be decided upon by the individual Danube riparian states concerned, except in the case that the planned revision of the Belgrade Convention gives the Danube Commission "new style" the power to issue binding regulations also on this subject; the recognition could then be decided upon by the Danube Commission itself. The recognition of Danube boatmaster's licenses as valid for Community waterways outside the Rhine would have to be decided upon, as Community legislation on this subject now stands, by the individual EU Member States concerned.

50. For those waterways where special knowledge of local navigational conditions (*Streckenkenntnis*) is required, methods must be agreed upon for candidates for boatmaster's licenses to acquire and to prove the possession of that knowledge in a simple way and at low cost.

## **VI. Differences in regulations on the size and composition of crews, and on working and rest hours.**

### **Description**

51. For the **Rhine**, Chapter 23 of the RVBR lays down rules on the size and composition of crews. The size and composition of the crews vary with the length of the vessel, its mode of exploitation (14, 18 or 24 hours/day) and the quality of its technical equipment.

52. On the **Danube**, there is no uniform regime regarding the size and composition of crews; this falls within the competence of the individual Danube States. Everywhere else, this is also a matter of national legislation, so the rules may vary from country to country.

53. The **EU** so far has no rules on the size and composition of crews, but they are under discussion. As to working and rest hours, the EU has adopted a directive (2000/34/EC) laying down minimum requirements for working and rest hours for mobile workers in the transport sector, which is applicable to inland navigation, and which has become effective in 2003.

54. **UNECE** has recently adopted a Recommendation containing a pan-European standard for minimum manning requirements and working and rest hours of crews in inland navigation.

### **Possible solutions**

55. Differences in rules on working and rest hours from country to country will not be an important obstacle for inland water transport. Crews of vessels entering a country generally will be able to conform to the working hours or navigation hours prevalent in that country, if these are regulated by law.

56. Differences in legal rules on the size and composition of crews can present obstacles in cases where vessels crossing a border are confronted with regulations prescribing larger or more highly qualified crews than prescribed in their country of origin. Inversely, it is also conceivable that differences in legal manning requirements between countries may affect competition between national inland fleets, as they may cause lower overall cost levels for inland water transport firms operating in and from countries where manning requirements are less onerous (or even absent). But, in actual practice, these types of situations give rise to few complaints, which may be partly due to the relative lack of binding regulations on this subject.

57. 57. If it is, nevertheless, felt that harmonization in this field is required, the Recommendation on minimum manning requirements and working and rest hours of the UNECE could provide a Pan-European standard. Within the Danube Commission, harmonization of rules on this subject is being considered.

## **VII. Restrictions on the freedom of pricing and contracting.**

### **Description**

58. Legally prescribed minimum prices for inland water transport services and restrictions on the freedom of contracting such services formerly existed in some countries, notably in Germany, the Netherlands, Belgium and France. In Germany, national transport was subject to a system of fixed minimum freight rates (*Festfrachten*). In the Netherlands, Belgium and France shippers were legally obliged to make their contracts for national transport through the intermediary of a state-run system of chartering by rotation (*tour de rôle*), which assigned cargoes to bargemen on a “first come, first served” basis; for this transport, too, shippers had to pay minimum freight rates fixed by law.

59. These *tour de rôle* systems and price controls no longer exist. They have been abolished, partly by measures on the national level, as in Germany, partly as a consequence of an EU liberalization directive, so pricing and contracting are now entirely free practically everywhere. The only legal texts where price controls can still be found are some bilateral inland water transport agreements, which prescribe minimum freight rates for bilateral transport.

60. Restrictions on the freedom of pricing and contracting clearly are not a serious problem nowadays. But given the frequent occurrence of periods in which inland water transport freight rates sink to very low levels, demands for the reintroduction of minimum freight rates tend to crop up from time to time.

### **Possible solutions**

61. Within the EU, Directive 96/75/EC stipulates that contracts in national and international inland waterway transport “shall be freely concluded between the parties concerned and prices freely negotiated”.

62. A number of price controls and cargo sharing clauses occurring in bilateral inland water transport agreements between EU and non-EU countries have already become void on the entry into the EU of the formerly non-EU countries involved, and more are to follow with further EU enlargement. From the few remaining bilateral agreements which will ultimately remain in existence, price controls and cargo sharing arrangements can only be removed by mutual consent of their Contracting Parties.



## **VIII. Lack of rules on competition.**

### **Description**

63. Legal obstacles may not only be caused by existing legal arrangements, but also by the absence or insufficient development of laws which are indispensable for the good functioning of a market system. A case in point may be the lack of legislation which aims at ensuring a workable degree of competition throughout the economy (anti-cartel legislation) in European countries outside the EU. The Treaty establishing the European Community expressly prohibits all agreements between business firms, which have as their object or effect the prevention or restriction of competition. EU member States have supplemented these treaty provisions by national legislation on competition. Application of these Community and national rules has led to the elimination of some cartels of small ship-owners, which formerly existed in Dutch and Belgian inland navigation. On the Danube, there still exist agreements between the formerly state-controlled national shipping companies, collectively known as the "Bratislava Agreements". To the extent that these Agreements aim at sharing the Danube shipping market and at fixing transport prices, they would probably have been considered as illegal if they had been practised within the EU.

### **Possible solutions**

64. The Agreements on partnership and cooperation between the European Community and its Member States, on the one hand, and several non-EU countries, on the other, may serve as frameworks for the development of competition law in those non-EU countries where this type of law is either nonexistent or insufficiently developed. The parties to these agreements have engaged themselves 1) to ensure that they have and enforce laws addressing restrictions on competition by enterprises, 2) to refrain from granting state aids favouring certain undertakings or productions or the provision of certain services, by which competition is or might be distorted, and 3) to endeavour to ensure that the legislation of the non-EU countries concerned on (among other things) rules on competition will gradually be made compatible with that of the European Community.

65. The Bratislava Agreements are currently in a process of change making them lose the cartel-like elements they formerly contained.

## **IX. Insufficient harmonization of the civil and public law framework.**

### **Description**

66. The civil law applicable to inland water transport operations (contract law, liability rules) is still mostly national in character and is not harmonized at the international level. This gives rise to legal uncertainty, may cause undue litigation and may raise the insurance costs of transport operations.

67. Steps to remedy this situation have already been taken or are currently under consideration. The CLNI Convention on the limitation of liability in inland navigation has entered into force, but covers only a limited number of countries and still awaits transformation into, or replacement by, a pan-European legal instrument. The CMNI Convention on the contract of carriage in inland water transport has been signed by a number of countries and is in the process of being ratified. Currently, the possibilities are being examined to create a pan-European regime concerning the liability for damages caused during the transport of dangerous goods on inland waterways.

68. In the field of public (administrative) law, subjects like the registration and the measurement of inland navigation vessels are covered by multilateral treaties, but these treaties have been ratified or acceded to by only a limited number of States and cannot be said to represent truly pan-European regimes.

69. In the Annex, a list is given of multilateral treaties concerning inland navigation currently in force.

### **Possible solutions**

70. The CLNI (Strasbourg) Convention on the limitation of liability in inland navigation (in force) still only has four Contracting Parties: Germany, Luxembourg, the Netherlands and Switzerland. Despite the fact that these Contracting Parties in 1997 formally invited the Member States of the Danube Commission, Poland, the Czech Republic, Bosnia-Herzegovina and Slovenia to accede to CLNI (according to Article 16 of CLNI such an invitation is a prerequisite for accession), none of the latter countries so far has become a Contracting Party. It has been suggested to convene a conference of the Contracting Parties with the countries who have been invited to accede, in order to elaborate a protocol modifying CLNI so as to take away the objections to the text currently preventing the latter countries from accession. This may well be the course of action to be undertaken.

71. The CMNI (Budapest) Convention on the contract for carriage of goods in inland water transport currently has 16 signatories, three of whom have ratified it to date. It may be expected to enter into force in the foreseeable future. Because of its relatively large number of signatories (a large majority of Danube countries, all CCNR countries plus Poland and the Czech Republic) and because future accessions are perfectly possible, this convention stands a real chance of becoming a contract law regime covering most of the Pan-European inland waterway network.

72. There still is no harmonized Pan-European regime concerning the civil liability for damage caused during transport of dangerous goods by inland waterway vessels. But it seems to be generally doubted whether Pan-European harmonization in this field really is necessary; it is also feared that an international regime on this subject only for inland navigation might weaken the competitiveness of this transport mode vis-à-vis the other modes. The current diversity of national liability rules in this field apparently is not felt to be an urgent problem.

## **X. Restrictions on the freedom of movement of inland water transport workers.**

### **Description**

73. The movement of workers is governed by general legislation on employment. Within the EU citizens may freely take jobs in any country they like; nationals of non-EU countries generally have only limited access to the labour markets of EU countries. So far there are no common rules at Community level for the admission of workers from outside the EU; each member State still has its own policy and legislation. In most EU States, the policy applied is based on the criterion of a proven shortage on the national employment market of the personnel requested. There are no arrangements known today that apply to the specific market of inland waterway transport. Hence, non-EU nationals who seek a job in the EU inland navigation industry may only obtain work permits if it is clearly demonstrated that, on the labour market of the EU, no suitable candidates for the vacancies concerned can be found. In spite of the fairly widespread complaints in the EU inland water transport industry about the difficulty of filling vacancies, it is not to be expected, in view of the still rather high level of unemployment in the EU, and of the fact that unemployed youngsters can be relatively quickly trained as sailors, that such permits will be distributed frequently.

74. For the sake of simplicity, the question of access to the employment market in the CEEC outside the EU will be left aside.

### **Possible solutions**

75. In the EU, after the enlargement of May 2004, the 15 “old” Member States are temporarily entitled to continue to restrict access to their labour markets for nationals of the 10 “new” Member States. But this transitional arrangement is to end definitively in 2011, and Member States may lower their entrance thresholds earlier, as some have already done (the Netherlands, for instance, recently dropped the requirement that it be demonstrated that within the “old” EU no suitable candidates can be found, in respect of “new” Member States’ nationals wanting to be employed in the Dutch inland water transport industry).

76. Currently under discussion within the EU, is a draft directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. This draft directive maintains the principle now generally applicable in EU Member States: to get a job in a Member State a third-country worker must obtain a work permit, which is issued only if it is demonstrated that the vacancy in question cannot be filled by a worker from within the EU. However, the draft directive allows Member States to adopt, for a limited but renewable period, provisions according to which this last requirement is deemed to be fulfilled, without the need for an individual assessment, for a specific sector confronted with a labour shortage. Member States could use this rule to alleviate labour shortages in the inland water transport sector. Furthermore, the draft directive proposes to drop the requirement to provide evidence that recruitment within the EU is not possible, in the case of third-country

nationals applying for a renewal of their work permit, who have been working legally in the EU for more than three years. But these rules, if adopted, obviously would still be a far cry from complete freedom of movement of workers throughout the Pan-European inland water transport market.

77. The free movement of workers may also be hampered by visa obligations, which could make it difficult for sailors to join or leave their vessels in countries other than their own. It has been suggested to solve this problem by means of a Pan-European agreement after the example of the Seafarers' Identity Documents Convention. This might be an idea but, in view of the relatively limited number of countries involved (most European countries nowadays admit each others' nationals without imposing visa obligations, at least for stays of limited duration), it might be more efficient to solve the problem by means of an agreement or agreements between the Governments concerned, aiming at facilitating the entry of each other's sailors into their territories. If such agreements cannot be realized, it seems unlikely that the unwilling countries would become parties to a Pan-European instrument to the same effect. It might also be considered whether the scope of the Seafarers' Identity Documents Convention can be extended so as to include inland navigation.

## **XI. Restrictions on the right of establishment.**

### **Description**

78. Within the EU, freedom of establishment, at least in the inland navigation sector, exists: any EU citizen may establish an inland water transport business in any EU Member State he likes. For nationals of third countries there normally will be restrictions, laid down by the national laws of Member States. Authorization for the establishment of such businesses is generally granted only if this will favourably influence employment and/or the economic development of the Member State concerned. The Europe Agreements, concluded between the EU and a number of Central and Eastern European countries, do not change this situation, since these Agreements do not apply to the inland water transport sector.

### **Possible solutions**

79. In the Agreements on partnership and cooperation between the European Community (and its Member States) and several non-EU European countries referred to above, the Contracting Parties grant each other's companies the right (on the basis of most favoured nation treatment or of national treatment, whichever is the better) to set up subsidiaries and branches on the territory of the other party. Unfortunately, inland water transport has been excluded from the application of this provision; it should be considered whether the Agreements can be modified on this point.

80. The draft EU directive mentioned in paragraph 76 contains also provisions concerning entry and residence of third-country nationals who want to set up a business as a self-employed

person in a EU Member State. Such persons must, according to the draft, obtain a “residence permit – self-employed person” from the competent authorities of the EU Member State concerned, valid for a period up to three years, and renewable for such periods. To obtain the permit, it must be demonstrated that the envisaged activities as a self-employed person will create an employment opportunity for the applicant and will have a beneficial effect on employment in the Member State concerned or on the economic development of that State. This requirement is waived for third-country self-employed persons who have legally exercised their activities in that Member State for more than three years and ask for a renewal of their permit.

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Annex

**List of multilateral treaties in the field of inland water transport currently in force**

1. **Convention relating to the Unification of Certain Rules concerning Collisions in Inland Navigation, of 15 March 1960**

Contracting Parties: Austria, France, Germany, Hungary, Netherlands, Poland, Romania, Russian Federation, Switzerland, Yugoslavia<sup>2/</sup>.

2. **Convention on the Registration of Inland Navigation Vessels, of 25 January 1965**

Contracting Parties: Austria, France, Luxembourg, Netherlands, Switzerland, Yugoslavia<sup>1/</sup>.

3. **Convention on the Measurement of Inland Navigation Vessels, of 15 February 1966**

Contracting Parties: Belgium, Bulgaria, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Republic of Moldova, Romania, Russian Federation, Slovakia, Switzerland.

4. **Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI), of 4 November 1988**

Contracting Parties: Germany, Luxembourg, Netherlands, Switzerland.

5. **European Agreement on Main Inland Waterways of International Importance (AGN), of 19 January 1996**

Contracting Parties: Bulgaria, Croatia, Czech Republic, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Republic of Moldova, Romania, Russian Federation, Slovakia, Switzerland.

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<sup>2/</sup> As of 4 February 2003, the Federal Republic of Yugoslavia changed its name to Serbia and Montenegro.