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INLAND TRANSPORT COMMITTEE

Working Party on Inland Water Transport
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agenda item 4)

**STUDY OF THE CURRENT SITUATION AND TRENDS IN INLAND
WATER TRANSPORT IN MEMBER COUNTRIES**

Transmitted by the Central Commission for the Navigation of the Rhine

Note: The secretariat reproduces below CCNR resolution 2003-I-13 entitled "Preparation of provisions for the implementation of Additional Protocol No. 7".

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PROTOCOL No. 13

Preparation of provisions for the implementation of Additional Protocol No. 7

Resolution

The Central Commission,

In its concern to ensure the timely preparation of the regulations for the implementation of Additional Protocol No. 7,¹

Having taken cognizance of the working document contained in the annex to this document, drawn up for the purpose by the secretariat,

Gives the competent committees responsibility for considering this document and setting out their comments, if possible for its autumn session, on the measures to be taken for the implementation of this Additional Protocol.

Annex to Protocol No. 13

Procedure and conditions for the recognition of vessel certificates and boatmasters' certificates issued by authorities other than the CCNR States

The purpose of this note is to consider the conditions for the implementation of the provisions of Additional Protocol No. 7.

The Protocol provides that "the Central Commission may recognize other vessel certificates and other boatmasters' certificates when their issue is based on conditions equivalent to those it establishes (...) and procedures ensuring effective compliance with it. Such recognition may be withdrawn if the Central Commission observes that the conditions established are no longer satisfied. The details shall be set out in the relevant regulations for implementation".

The following reflections are intended as preparation for drafting the regulations for implementation contained in these provisions.

I. Scope of the recognition for which Additional Protocol No. 7 provides

When Additional Protocol No. 7 was adopted, it was accepted that an amendment of the Mannheim Convention was necessary in order to have a sound legal basis for the recognition of the vessel certificates and boatmasters' certificates issued by authorities other than those of States members of the Convention.

¹ *Note by the secretariat:* The text of Additional Protocol No. 7 has been circulated as document TRANS/SC.3/2003/11/Add.1.

The question arises as to whether the same legal basis is necessary for the recognition of other more technical documents, in particular:

- Radar patents;
- Radio operators' certificates.

More generally, a question could also be raised as to the conditions enabling CCNR to recognize the equivalence of regulations issued by other authorities (e.g. concerning vessel engine emissions) with its own regulations.

The secretariat proposes that consideration should be given to whether only recognition of boatmasters' certificates and vessel certificates are subject to ratification of Additional Protocol No. 7.

These two types of document are, in fact, the only ones to be mentioned in the Mannheim Convention. The other certificates (radar, radio) are exclusively technical and have no specific relation to Rhine shipping. Subjecting recognition of these technical certificates to prior ratification of Protocol No. 7 would be contrary to the interpretation accepted to date. For example, the Central Commission has introduced a mechanism in resolution 2002-I-36 for the recognition of radar patents issued by third States.

II. Arrangements and procedure for recognition

The same schema could, a priori, be used for vessel certificates and boatmasters' certificates.

1. Purpose of recognition

Recognition shall take place within the laws or regulations defining the conditions for the issue of certificates.

The laws or regulations shall contain conditions equivalent to those of the Rhine regulations. The definition of this equivalence is the sensitive issue in the implementation of Additional Protocol No. 7. The inclusion of the following aspects, which will have to be specified in even more detail, is proposed:

- (a) Equivalence shall be checked:
 - In the context of the substantive rules;
 - In the context of the procedures ensuring compliance with the substantive rules.
- (b) Equivalence shall be taken to mean rules:
 - That are either identical;
 - Or ensure the same guarantees as the Rhine rules.

(c) The concept of equivalence shall be interpreted differently for substantive rules and procedural rules:

- For substantive rules, identity of content shall be sought as far as possible;
- For procedural rules, identity cannot exist by definition; the only possible course is to ensure an equivalence of guarantees.

(d) If there are differences, they may be ignored, both for substantive and procedural rules:

- If they do not have particular significant consequences; the differences must not have consequences on conditions of competition and thus on the costs incurred by the requirements;
- If the negative consequences are adequately offset by positive consequences; the equivalence can thus be appreciated in terms of the laws or regulations in question as a whole.

(e) When laws or regulations are recognized as being equivalent to the Rhine regulations, all certificates issued on the basis of full compliance with these laws or regulations shall be recognized as valid on the Rhine. The following consequences may be adduced:

- If a certificate has only been delivered on the basis of an exception to recognized laws or regulations or on the basis of a transitional provision exempting it from full compliance with the requirements of the laws or regulations, it cannot be recognized as being equivalent unless recourse is had to an individual review process to ascertain whether the exception or exemption concerns an aspect deemed to be minor;
- If the Rhine regulations themselves contain transitional provisions, a review shall be made of these to ascertain whether they may be taken into account in the context of the recognition of non-Rhine legislation or regulations.

2. *Procedure for review of applications*

The recognition of regulations concerning vessel or boatmasters' certificates requires an application to be submitted by the State or international organization responsible for those regulations.

The application shall be accompanied by all the provisions relating to the certificates in question, in one of CCNR's working languages.

The application shall be considered by the competent committee:

- RV Committee for vessel certificates;
- STF Committee for boatmasters' certificates;

The competent committee shall consider these laws or regulations and give an opinion on their equivalence. If necessary, it shall perform the necessary checks, request additional information and may interview the representatives of the authorities concerned.

The decision shall be the responsibility of the plenary of the Central Commission which shall give a ruling on:

- The equivalence;
- The appropriateness of recognition.

Recognition is not a right, even when equivalence is observed. It involves a political assessment which takes into account:

- The existence of adequate reciprocity;
- The existence of conditions of collaboration ensuring that equivalence is maintained in the future development of the requirements;
- Possibly other considerations relating to the orderly progress of shipping on the Rhine. (Reference may be made here to the notion of “prosperity of Rhine navigation”, referred to in article 45 (b) of the Mannheim Convention.) These considerations should, however, remain separate from economic concerns which are the province of Additional Protocol No. 2.

III. Updating the recognition of equivalence

As the Rhine regulations develop, the risk exists that equivalence will no longer be ensured. It shall therefore be accompanied by a cooperation agreement guaranteeing the development of Rhine legislation in concordance with the laws or regulations recognized as equivalent.

This agreement shall provide for an exchange of information and consultation. The consultation shall take the form of an annual coordination meeting during which agreement is reached on the evolution of the conditions.

If despite this consultation equivalence can no longer be ensured, the competent committee may bring a proposal to withdraw the equivalence before the Central Commission.

Withdrawal of the equivalence may entail two types of consequences:

- Loss of validity of all certificates issued under the legislation no longer recognized;
- Absence of validity of new certificates issued after a date as from which new conditions apply on the Rhine for new vessels or new certificate holders.

IV. Checks

1. Checks by CCNR and the authorities of the Rhine States

CCNR shall reserve the right to perform checks on the recipients of certificates in order to ascertain whether genuine equivalence exists in terms of practical implementation. Such checks shall, in principle, be the exception, but the possibility should be reserved of performing them. If put into practice, checks shall generally be performed on the waterway by the authorities of the Rhine States.

Checks shall concern compliance by the beneficiary of the certificate with the recognized laws or regulations.

If significant failures to comply are observed, it shall be possible to declare an individual withdrawal of the equivalence.

Such a withdrawal can only take place following an adversarial procedure in which the authorities with jurisdiction for the recognized laws or regulations shall be able to take a decision on compliance with these laws or regulations by the beneficiary whose conduct is contested.

2. Checks by non-Rhine authorities

The authorities competent to issue certificates under laws or regulations recognized by the Central Commission shall make a commitment to perform the appropriate checks to ensure effective and full compliance with the requirements of those laws or regulations by the recipients of certificates issued under them.
