

INSTITUTIONAL ASPECTS REGARDING INLAND NAVIGATION

EBU POSITION ON THE EFIN REPORT

1. INTRODUCTION

The legal framework regarding Inland Waterway Transport (IWT) in Europe more or less has been developed by the Central Commission for the Navigation on the Rhine (CCNR). In the past years it has been further developed with the European Commission. Within this framework the political dimension is missing, which together with the legal aspects is a precondition for the positioning of IWT.

With the enlargement of the European Union, Inland Waterway Transport (IWT) will play a more important role in the internal market. Many of the new Member States have navigable waterways which are used for freight transport. Taking into account the policy announced by the European Commission, IWT as such, as well as part of the intermodal transportchain, can play a major role in the integration of the new Member States and realizing their economic growth potential.

European IWT is covered by three distinct systems of law, which overlap geographically to some extent:

- The area of application of the Mannheim Convention of 1868.
- The area of application of the Community treaties and the *acquis communautaire*.
- The area of application of the Belgrade Convention of 1948.

The Mannheim Convention is the oldest European treaty still in force. It was concluded in 1868 between the Rhine riparian states. Under the Mannheim Convention the EU Member States which are also signatory states transferred responsibilities falling within the scope of the Convention to the Central Commission for Navigation of the Rhine (CCNR). The Convention in principle guarantees freedom of navigation on the Rhine. A series of regulations and resolutions have been drawn up by the CCNR in implementation of the principles of the Convention. These deal, inter alia, with technical standards, manning, and the safety and freedom of shipping. The CCNR has jurisdiction in disputes falling within the scope of the Convention. Its decisions are binding on the signatory states and are required to be implemented in national law. There is a uniform system for the Rhine which has been implemented uniformly in all the signatory states. Switzerland is the only signatory state which is not also a member of the EU.

With the establishment of the European Community, and the subsequent Treaty changes, additions and derived legislation, responsibility for establishing a Community internal market was transferred by the Member States to the European Commission. Powers in the field of goods transport, inter alia, were assigned to the European Commission, and the Commission has since developed secondary European law in this area by means of regulations and directives. European law, which applies in the Member

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States of the European Community, also covers scrutiny of technical standards, manning and safety, and the Commission has supplemented the law in these areas by recourse to the decisions and resolutions of the CCNR, which are applied in the Community.

In 1948 the Belgrade Convention was concluded by the Danube riparian states. The Convention set up the Danube Commission, which monitors the Danube regime on the basis of the Belgrade Convention and develops it further. The Belgrade Convention regime in principle sets out to regulate cross-border Danube shipping. In implementation of this principle, a series of recommendations have been made to the signatory states under the auspices of the Danube Commission, covering, among other things, technical standards, safety and manning rules. The decisions of the Danube Commission under the Belgrade Convention are recommendations to the signatory states, which have in some cases been implemented in national law. In view of the nature of the decisions of the Danube Commission, there is no uniform system for shipping on the Danube, in the sense that decisions are not implemented automatically and unchanged in the signatory states. With the forthcoming accession of one Balkan state to the EU, possibly with others to follow, a number of signatory states, such as Russia, Ukraine and Moldavia, will in future remain which are not also members of the EU.

As European IWT is currently governed by different systems, leading to differences in legal instruments and divergent rules, *de jure* and *de facto* obstacles arise, inter alia, in relation to:

- restrictions on market access;
- restrictions on transport rights for "foreign" vessels;
- disparities in technical standards and certificates.

2. RELATION BETWEEN THE EUROPEAN COMMISSION AND THE RIVER COMMISSIONS

2.1. European Commission and Central Commission for Navigation of the Rhine (CCNR)

On 3 March 2003 the European Commission and the CCNR signed a cooperation agreement. The European Commission and the CCNR share common goals with regard to the development of IWT. Both organisations are therefore determined to promote the unification of the IWT market on the basis of the principle of freedom of shipping. Both the European Commission and the CCNR make it clear that effective cooperation is necessary in order to create the conditions enabling European IWT to develop its potential to the full.

On 28 November 2002 the member states of the CCNR signed the seventh protocol to the revised Mannheim Convention, which makes it possible to recognise certificates and licences issued on a basis comparable with the regulations applicable to Rhine navigation. This measure, which will apply in particular to Community documents, sets out to harmonise the different regimes in a pragmatic way and to simplify the administrative responsibilities of IWT firms.

The mentioned protocol has entered into force on 1 December 2004.

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2.2. Danube Commission

The Danube Commission is currently considering modernisation and possible revision of the Belgrade Convention. This is connected with the cooperation which has existed for a number of years between the Danube Commission and the CCNR in the form of joint committees. The negotiations on possible revision cover the following areas:

- the question of principle as to the definition of freedom of shipping on the Danube (freedom of shipping only or freedom of shipping and other forms of transport);
- the legal status of the decisions of the Danube Commission (recommendations or binding).

European IWT is currently regulated by different regimes, which leads to disparities in legal instruments and regulations with differing content. This concerns the states which fall under the CCNR regime, the Member States falling under the EC regime and the countries falling under the Danube Commission regime. Whilst the CCNR and EU regimes are legislative in nature and cover all the Member States to some extent, the Danube Commission regime is based on recommendations.

3. POLITICAL FRAMEWORK

The European Commission has decided to tackle the problems identified in the transport sector and is putting forward policy solutions aimed, inter alia, at shifting the balance between modes of transport. Bearing in mind the main goals referred to in the transport policy, the Commission pointed out in its White Paper that IWT, which has hitherto been underused, could provide a means of coping with the congestion of certain road infrastructure.

Where transport has been defined as a key area for integration of the European Union with Central and Eastern European countries, the enlargement of the European Union is a big challenge which offers advantages for the implementation of the new transport policy.

Recently a study, launched by the European Commission on the current situation of the inland navigation sector and its prospects in the enlarged European Union -“PINE-Prospects of Inland Navigation within the enlarged Europe” – has been completed and submitted to the European Commission. It is stressed in this report that the common transport policy of the European Union attaches major importance to the development of inland waterways as a mode of transport. Inland Waterway Transport represents not only a genuine alternative to road transport but also a real possibility of linking up with other modes of transport.

Inland Waterway Transport has proved to pay an important contribution to the demands within the European transport policy. Moreover it is able to meet the challenges of competitiveness, security and environment, while at the same time offering capacities in terms of infrastructure and fleet. Its development therefore may contribute significantly to the attainment of transport policy objectives, in particular shifting the balance between modes of transport.

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4. CRITERIA FOR A (PAN-) EUROPEAN INSTITUTIONAL FRAMEWORK

The EFIN-report represents an excellent analysis of the current situation in inland navigation. EFIN's definition of the problem – that inland shipping has been too low on the list of priorities at the level of European traffic politics – is subscribed to by the industry. Structural measures are required to make up for lost ground.

A number of factors are of vital importance to the inland shipping industry:

- Guaranteeing free passage on pan-European waterways/river systems.
- Fully harmonised legislation in the area of navigation, technology and safety, however, recognizing the fact that requirements made of shipping on the relevant rivers/waterways may differ on the basis of geographic factors.
- Structural involvement of the industry in elaborating and developing legislation.
- Possibilities of adapting regulations relatively rapidly and easily on the basis of experiences and innovations, in consultation with the governments directly involved.
- Stronger involvement of European institutions in developing waterways and inland shipping.
- Harmonised European legislation that takes inland shipping fully into account as a mode of transport.
- European policy aimed at strengthening the role of inland shipping, as is currently the case in the maritime /short sea sector.
- Clustering rather than fragmenting European expertise in inland navigation.

5. CONSIDERATIONS AND RECOMMENDATIONS

Up until now, the European transport policy has given little priority to inland shipping. The fact that Europe was not involved in the institutional frameworks in this area, partly due to the existence of the River Commissions, seems to be the cause of this. Many areas can be pointed out in which policy must be developed at the European level. Not only in the area of harmonising inland shipping legislations such as in the fields of navigation, technology and safety, but also in much wider fields such as logistics, spatial policy, innovation, intermodality, environment, stimulation, etc.

Europe has two pan-European river systems. International conventions have been drawn up for these river systems, the Mannheim Convention (Rhine et al.) and the Belgrade Convention (Donau et al.). The two river systems each fall under a River Commission (CCR: Strasburg and Donau Committee: Budapest). There are extensive regulations for the Rhine in which fully harmonised legislation on navigation, technology and safety as well as waterway management is laid down.

Regulations for national waterways in Europe – certainly for Western Europe – have mainly been derived from the CCR regulations. In these, national states choose to apply exceptions and deviations for reasons of their own. Often, European regulations do not impede this because many regulations, especially those implemented via directives, inherently contain deviations (tightened rules). Neither is it desirable to lay down all inland shipping regulations in EU regulations, in view of the gravity of the relevant decision-making processes and the involvement of many parties that are not directly

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concerned with inland shipping. Moreover, these EU regulations will in turn also be subject to deviations, or will not be specific enough given the relevant differences that exist between different waterway systems. Neither will it be possible to implement changes at the desired pace for the above-mentioned institutional reasons (quite apart from the fact that the costs of making or changing an EU regulation are much higher than the costs entailed in the current manner at decentralised level).

On European level, primacy has to be given to the aspect of where decisions should be made: centrally at the European level or decentrally in the relevant member states. Specific agreements have been made for the river systems which, from the European perspective, have a decentralised and also pan-European effect. It is desirable for future agreements at the European level to have Conventional decentralisation take place via these systems. Europe sets the framework and the River Commissions operate within this framework.

CONCLUSION

- **It is imperative to strengthen the position of IWT by formulating a European inland navigation policy. The establishment of an European office or Commission for inland navigation equipped with the necessary own competences and means and involving the secretariats of the River Commissions would be a good instrument for this.**
- **Regarding the regulative framework the existing international Conventions (Mannheim Convention and Belgrade Convention in the revised version as mentioned under 2.2.) must be maintained supported with the respective European legal set of instruments.**
- **Therefore the River Conventions and regimes must be embedded in a European framework aiming at a European harmonisation/unification of inland navigation while maintaining the existing international River Conventions. They guarantee a practically oriented and efficient development of the necessary regulations which are practically applicable all over Europe.**
- **Organisation, tasks, competences and financial resources need to address the reinforcement of the acceptance of the inland navigation and better express its fully European dimension.**

The European Union is called upon to work on a solution in line with these recommendations and in favour of the future development of IWT.

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