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White Paper on efficient and sustainable inland water transport in Europe

Institutional framework of inland navigation and regulatory architecture for inland navigation in the ECE region

Note by the secretariat

I. Introduction

1. Presented below are the draft chapters on the institutional (chapter II) and regulatory (chapter III) frameworks of inland navigation in the region of the United Nations Economic Commission for Europe (UNECE), prepared by the secretariat in the course of the work on the UNECE White Paper on Efficient and Sustainable Inland Water Transport in Europe in accordance with the decision of the fifty-third session of the Working Party (ECE/TRANS/SC.3/183, para. 22).

2. Based on this note and the draft Chapter I on the current state of the European network of inland waterways of international importance (ECE/TRANS/SC.3/2010/2), the Working Party may wish to discuss the policy recommendations in the draft concluding Chapter IV on the Pan-European vision for efficient and sustainable inland water transport (ECE/TRANS/SC.3/2010/4) and provide further instructions to the secretariat on the finalization of the White Paper.

II. Institutional framework for inland navigation in the UNECE region

3. Several international bodies, with varying degrees of geographical scope, legislative mandate and substantive coverage, constitute the institutional framework for inland navigation in the ECE region. This section presents a brief overview of these institutions highlighting the commonalities and differences in mandate and regional scope (section A). It also reviews the current policy debate aimed at enhanced coordination and cooperation

among the various stakeholders with a view to harmonizing rules and regulations governing inland water transport (IWT) at the pan-European level (section B).

A. Fragmented institutional landscape

4. Inland navigation in Europe is regulated by a variety of inter-governmental institutions and bodies, including river-specific navigation commissions, the European Union (EU), UNECE and Pan-European ministerial conferences.

5. The main European international rivers are managed by specially established navigation commissions entrusted with setting technical and legal standards for the navigation in their respective river basins. At present, there are four river navigation commissions in the ECE region.

6. The Central Commission for the Navigation of the Rhine (CCNR) was established in accordance with the 1868 Mannheim Convention for the navigation of the Rhine. Parties to the Mannheim Convention are: Belgium, France, Germany, the Netherlands, Switzerland and the United Kingdom of Great Britain and Northern Ireland (UK), although UK ceased to participate in the work of the Commission as of 1 January 1994. The main objectives of the CCNR are to promote the development of navigation on the Rhine and to guarantee a high level of safety for navigation and its environment. The decisions of the CCNR are legally binding for its member States. The CCNR is based in Strasbourg (France).

7. The Mosel Commission (MC) was established in accordance with the 1956 convention between France, Luxembourg and Germany on the canalization of the Mosel. The Commission met for the first time on 21 December 1962 – one and a half years after the completion of the project. Through the issuance of binding decisions, the commission regulates the navigation on the Mosel, such as traffic rules, crew certificates, manning requirements and tolls. The Commission's headquarters are located in Trier (Germany).

8. The Danube Commission (DC) was established in accordance with Article V of the 1948 Belgrade Convention on the regime of navigation on the Danube. It counts eleven member States: Austria, Bulgaria, Croatia, Germany, Hungary, the republic of Moldova, Romania, the Russian Federation, Serbia, Slovakia and Ukraine. The Contracting Parties commit to maintain the navigability of their respective sectors, undertake necessary works and not to create obstacles to navigation. DC issues decisions and recommendations which are not legally binding and need to be implemented through transposition into national legislation of its member States.

9. The International Sava River Basin Commission (hereafter, the Sava Commission (SC)) was established in 2003 to implement the Framework Agreement on the Sava River Basin between the four riparian countries (Bosnia and Herzegovina, Croatia, Serbia and Slovenia). The goals of SC are the establishment of an international regime of navigation on the Sava River and its navigable tributaries, of sustainable water management and measures to prevent or limit hazards. Decisions of the Sava Commission in the field of navigation are legally binding for its member States.

10. In the EU member States, inland navigation is increasingly governed by EU. In 2001 the European Commission (EC) published a White Paper on the "European Transport Policy for 2010: time to decide", emphasizing the impact of traffic congestion caused by the imbalance between transport modes and the need for the integration of transport in sustainable development. The paper proposed a series of measures to revitalize alternative modes of transport to road, including inland water transport. The EU IWT policy was further elaborated in the 2006 EC communication on the "Navigation and Inland Waterway

Action and Development in Europe" (NAIADES) Programme".[1] The programme included four major components for the period of 2006–2013: Markets, Fleet, Jobs and Skills and Image, and included concrete actions for each area.[2]

11. The EU also addresses the main technical and legal issues of inland navigation, such as access to the market and the profession, state aid, competition, pricing, technical prescriptions applicable to inland vessels and the boatmasters' licences, through a number of specialized directives. Potential uncertainties as to the applicability of EU legislation to navigation on the Rhine, governed by the Manheim Convention, which precedes EU legislation and involves a third State (Switzerland),[3] are being resolved by progressive harmonization between the two regimes and close cooperation between the EC and the CCNR.

12. At the pan-European level, Pan-European Ministerial Conferences on Inland Water Transport, regularly organized during the last fifteen years, result in Ministerial declarations on the priorities for inland water transport development.[4] The latest declaration, adopted at Bucharest in September 2006, addressed a wide range of issues related to the harmonization and integration of the regulatory framework, coordinated development of inland waterway transport, infrastructure development and the environment.

13. The UNECE addresses the pan-European inland navigation issues both at technical and policy levels. A recognized centre for international land transport agreements, UNECE maintains over 50 international conventions which provide a legal framework and technical regulations for the development of international road, rail, inland navigation and intermodal transport and also for the transport of dangerous goods and the construction of road vehicles. In the field of inland navigation, UNECE has prepared and maintains international conventions, such as the 1996 European Agreement on Main Inland Waterways of International Importance (AGN), the 2000 European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), as well as several conventions dealing with the international private law issues and liability in inland navigation.[5] The UNECE Working Party on Inland Water Transport (SC.3) addresses a large number of issues related to technical and safety standards in inland navigation and ensures their harmonized application by means international resolutions. The acceptance of these resolutions by UNECE member States is monitored regularly by the Working Party.[6] Many UNECE resolutions, such as UNECE Resolution No. 24 on the "European Code for Inland Waterways (CEVNI)" and UNECE Resolution No. 31 on "Recommendations on Minimum Requirements for the Issuance of Boatmaster's Licences in Inland Navigation with a view to their Reciprocal Recognition for International Traffic" have been accepted and implemented by a large number of countries.

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[1] See: COM(2006) 6 final of 17 January 2006.

[2] The communication was circulated by the Working Party on Inland Water Transport as document ECE/TRANS/SC.3/2006/5.

[3] R. Bieber, F. Maiani, M. Delaloye, *Droit Européen des transports*, Helbing & Lichtenhahn, Dossiers de droit européen, 2006, «Les transports par voie navigable», pp.138-143.

[4] These conferences include Ministerial Conference on Timely Issues of European Inland Waterway Transportation (Budapest, September 1991); Pan European Conference on Accelerating Pan European Co-operation towards a Free and Strong Inland waterway transport (Rotterdam, 5–6 September 2001) and Bucharest conference on Inland Navigation: a Key Element of the Future Pan European Transport System (Bucharest, 13–14 September 2006). The most recent Ministerial Declarations are available at: http://www.unece.org/trans/cd.html.

[5] Full list of UNECE IWT conventions is available on the "Legal Instruments" webpage: <http://www.unece.org/trans/main/sc3/sc3_legalinst.html>.

[6] The full inventory of UNECE Resolutions on Inland Water Transport and the secretariat's report on their acceptance are available at: http://www.unece.org/trans/main/sc3/sc3res.html.

14. The table below provides an overview of membership in the above-mentioned international organizations and bodies.

Table 1: Membership in inland navigation organizations
(Only full membership)

	UNECE	*EU*	*CCNR*	*DC*	*SC*	*MC*
Austria	x	x		x		
Belarus	x					
Belgium	x	x	x			
Bosnia and Herzegovina	x				x	
Bulgaria	x	x		x		
Croatia	x			x	x	
Czech Republic	x	x		x		
Finland	x	x				
France	x	x	x			x
Germany	x	x	x	x		x
Hungary	x	x		x		
Ireland	x	x				
Italy	x	x				
Lithuania	x	x				
Luxembourg	x	x				x
Netherlands	x	x	x			
Poland	x	x				
Republic of Moldova	x	x		x		
Romania	x	x		x		
Russian Federation	x			x		
Serbia	x	x		x	x	
Slovenia	x	x			x	
Slovakia	x	x				
Switzerland	x		x			
Ukraine	x			x		
United Kingdom of Great Britain and Northern Ireland	x	x				
United States	x					

15. At present, in addition to national regulations there are six international legal regimes governing inland navigation in Europe: the EU legislation, specific river regimes for the Rhine, Danube, Mosel and Sava and the UNECE regime. Almost all these regimes and inter-governmental institutions existed at the time of publication of the first UNECE

White Paper on inland navigation in 1996. The only exception is the International Sava River Basin Commission founded in 2002 as a temporary body and transformed into a permanent organization in 2005.

16. The fragmentation of the institutional landscape in the UNECE region and the underlying different legal regimes for inland navigation require permanent and very considerable efforts by all Governmental stakeholders to coordinate policies and regulatory measures and to closely cooperate with each other in order to further harmonize still disparate rules and legal regimes.

17. The next section presents a summary of some of the salient features of recent policy discussions on the future of the European inland navigation regimes and their institutions.

B. The future of European inland navigation institutions

18. The issue of the institutional framework for inland navigation in the UNECE region has been subject to numerous studies, policy papers and ministerial declarations in the recent past.[7] While some studies and policy papers advocated a substantial change of the institutional landscape, i.e. creation of a new European institution in charge of IWT development,[8] others favored continued harmonization of technical and legal rules for European inland navigation or a "silent revolution" to take place within the existing institutional setting to ensure uniformity in substance.[9] The regime of inland navigation in the UNECE region remains an important topic for policy discussions and, as recently as in 2008, EC commissioned an impact assessment study of proposals aiming to modernize and reinforce the organizational framework for inland waterway transport in Europe".[10]

19. In 2004, a report of the European Framework for Inland Navigation (EFIN) Group (hereafter, the EFIN report) identified a number of difficulties in the development of the full potential of inland navigation and argued that the existing institutional framework was not strong enough to attract sufficient attention at political level to the problems of inland navigation or to mobilize all resources necessary to develop the sector. The EFIN report advocated the establishment of a new European organization for inland navigation, which would include political, administrative and financial components and would include also non-EU countries. The European Economic and Social Committee, in its 2006 opinion on the institutional framework for inland waterway transport in Europe (2006/C 185/18), supported the establishment of a pan-European Inland Navigation Organization, in which

[7] European Framework for Inland Navigation (EFIN) Group "A new institutional framework for the European Inland Navigation" (October 2004), PINE Study "Prospects of Inland Navigation within the Enlarged Europe" (September 2004), the UNECE "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", ECE/TRANS/SC.3/2005/1, January 2005, Opinion of the European Economic and Social Committee on the institutional framework for inland waterway transport in Europe (April 2006) and Declaration of the Ministers of the Member States of the Central Commission for Navigation of the Rhine, Basel, May 2006.

[8] EFIN Group "A new institutional framework for the European Inland Navigation"; Opinion of the European Economic and Social Committee on the institutional framework for inland waterway transport in Europe.

[9] J.M. Woehrling, CCNR Secretary General, "Is the Legal Framework of European Inland Navigation Suitably Adapted?", *Strengthening Inland Waterway Transport: Pan-European Co-Operation*, ECMT, 2006, pp.36-41, available from: <http://www.internationaltransportforum.org/europe/ecmt/pubpdf/06WatPaneurop.pdf>.

[10] EC, "Report on the impact assessment of proposals aiming to modernize and reinforce the organizational framework for inland waterway transport in Europe" (October 2008). See: <http://ec.europa.eu/transport/inland/studies/doc/2008_ia_modernise_inland_waterway.pdf>.

all European countries and organizations concerned, including EU, would cooperate within a single framework.

20. In 2006, in its communication launching the NAIADES programme, EC envisaged to stimulate the process of modernizing the organizational structure of inland waterway transport. In its first progress report on the NAIADES programme (COM(2007) 770 final, Brussels, 5.12.2007) EC however declared that, under current circumstances, it was preferable to base the organizational framework on the existing institutional actors. This conclusion was drawn based on an impact assessment carried out by EC, which concluded that the modification of the organizational structure would not provide a sufficient contribution to removing the obstacles for the development of inland waterway transport in Europe.[11] The report on this impact assessment recommended to reinforce or to reorganize cooperation between EC and the river commissions as the best means to address the challenges in IWT development.

21. The continued harmonization of existing international rules and regulations in inland water transport could eventually overcome the existing fragmentation of the institutional landscape in inland navigation sector.[12] This requires however that the necessary procedures and mechanisms are put in place and operated efficiently to ensure that, apart from specific and local exceptions, revised, updated and new rules and regulations in inland navigation are commonly agreed upon at the widest possible level and provide a model for implementation at subregional and national levels.

22. The next section on European regulatory architecture for inland navigation reviews the content of the existing legal regimes applicable at EU, UNECE and River Commission levels and analyzes the extent to which they are harmonized.

III. Regulatory framework for inland navigation

23. Aimed at dealing with the main aspects of inland navigation, the inland navigation regimes of the EU, UNECE and River Commissions cover a large number of identical areas. As a result, the regulatory framework for inland navigation addresses a variety of issues, such as the standards and parameters of inland waterways, access to inland waterways, technical and safety requirements applicable to inland water transport, civil and public law aspects of IWT operations as well as environmental aspects of inland navigation.

24. This chapter contains a brief description of these key elements of the regulatory framework for inland navigation (section A) and presents the priorities in the further development of the framework, highlighting the challenges encountered in the process (section B).

A. Content of the European inland navigation regimes

25. The exact coverage and legal force of European inland navigation regimes vary according to the original mandate and the legislative mandate of each organization. The table in the annex contains a summary of the legal regimes applicable at EU, UNECE and River Commission levels, highlighting legally binding instruments where available. The following paragraphs provide an overview of the most important components of these regimes, such as standards and parameters of European inland waterways, access to market,

[11] EC, "Report on the impact assessment of proposals aiming to modernize and reinforce the organizational framework for inland waterway transport in Europe".

[12] "Is the Legal Framework of European Inland Navigation Suitably Adapted?", J.M. Woehrling, pp.36-41.

technical and safety requirements applicable to inland water transport, civil and public law aspects of IWT operations as well as environmental aspects.

1. Standards and parameters of European inland waterways

26. The main international legal instrument which identifies the network of the European inland waterways of international importance is the European Agreement on Main Inland Waterways of International Importance (AGN), done in Geneva on 19 January 1996. By acceding to the AGN, Governments commit themselves to the development and construction of their inland waterways and ports of international importance in accordance with the uniform technical and operational characteristics contained in an annex to the agreement. The existing inland waterways and ports of international importance, corresponding to these characteristics, are listed in the annexes to the agreement. The AGN entered into force on 26 July 1999 and as of July 2010 sixteen States have become Parties to the agreement. In addition, the Protocol on Combined Transport on Inland Waterways to the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) establishes uniform requirements to be met by the infrastructures and services of combined transport using inland waterways. This Protocol entered in force on 29 October 2009 and as of July 2010 counts nine Contracting Parties. It identifies some 14,700 km of E waterways and terminals that are important for regular and international intermodal transport and correspond, as a minimum, to inland waterways of Class Vb.6.

27. The AGN agreement is maintained by the UNECE Working Party on Inland Water Transport and is complemented by a reference document ("Blue book") which contains detailed information on the technical characteristics of European inland waterways and ports of international importance (E waterways and ports) identified in the AGN agreement. The Blue Book also contains a list of the most important bottlenecks and missing links in the E waterway network with the goal to help countries focus their infrastructure development projects on the further development of an integrated inland navigation network.

28. In addition to helping countries monitor and coordinate the development of the inland navigation network, the AGN also provides a reference tool for other agreements on inland navigation issues. For instance, the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) specifies that only the countries whose territory contains inland waterways, which form part of the AGN network, may become Contracting Parties to the Agreement.

29. River Commissions provide information on the status of their specific river basins, while the EU technical directives usually specify the geographical areas covered by their requirements.

2. Access to market

30. While the freedom of navigation on international inland waterways was proclaimed in such fundamental international instruments as the Final Act of the Vienna Congress of 1815, there is no international legal instrument establishing the freedom of access to all inland waterways in the UNECE region. Today, important restrictions in access still exist when it comes to the Rhine, Danube and the waterways of some of the UNECE countries, such as in Kazakhstan, the Russian Federation and in Ukraine.[13]

[13] EFIN Group "A new institutional framework for the European Inland Navigation", para. 37; UNECE "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"

31. The EU 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 transport operations both within EU countries other than their country of establishment (cabotage) and between EU countries. These two regulations do not affect the transport rights of vessels from non-EU countries that are Contracting Parties to the Act of Mannheim and the Belgrade Convention.

32. Article 4, paragraph 1 of the Act of Mannheim (as amended by Additional Protocol No. 2) 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 genuine link with one of the CCNR or EU member States. Vessels not belonging to the 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. Article 4 of the Act of Mannheim further specifies that the conditions for the transport of freight and persons by vessels not belonging to the 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.

33. While proclaiming the principle of freedom of navigation for vessels of all States in all border-crossing traffic on the Danube, the Belgrade Convention excludes vessels flying foreign flags from national transport operations (cabotage). Moreover, some Parties to the convention do not consider that "freedom of navigation" implies the freedom to carry out transport operations.

34. Finally, the national waterways of a number of non-EU countries still remain closed for international navigation (Kazakhstan, the Russian Federation) or are open only on the basis of bilateral agreements (Ukraine).

35. While the situation with respect to the rules on access to market has changed little since the analysis provided in the first UNECE White Paper in 1996, a significant change took place in practice, as the last two waves of EU enlargement led to the inclusion of the inland waterways of Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia into the EU market.

3. Technical and safety requirements applicable to inland water transport

36. The technical and safety requirements applicable to inland water transport cover *inter alia*, rules of the road, requirements for the construction of inland vessels (technical prescriptions), requirement for issuing boatmaster certificates, rules on the transport of dangerous goods, rules on river information services and recreational navigation. In most of these areas, EU, UNECE and River Commissions have adopted specific documents, listed in the annex. Despite the different organizational sources of the existing regulations and recommendations, the substance of these documents is harmonized to a significant extent.

37. In terms of the rules of the road for inland navigation, the core uniform rules applicable to the traffic on inland waterways (marking on vessels, visual signs on vessels, sound signals and radiotelephony, waterway signs and markings, rules of the road, berthing rules, signaling and reporting requirements and prevention of pollution of water and disposal of waste) are contained in the UNECE Resolutions on "European Code for inland waterways (CEVNI)" and "Signs and Signals for inland Waterways (SIGNI)". The first editions of CEVNI and SIGNI, adopted in 1962 and 1957, respectively, drew heavily on the provisions of the Policy Regulations in force on the Rhine, and were used as a basis for the elaboration of the DC "Basic provisions relating to navigation on the Danube". The content

(hereafter, the 2005 UNECE Inventory of existing legal obstacles), pp. 5–7.

of these resolutions evolves with the evolution of the River Commissions' regulations ensuring a high degree of harmonization between these documents. The most recent significant revision of CEVNI, based on comparative analysis of the CCNR, DC, the Mosel and the Sava Commissions' regulations, took place in 2008–2009.

38. In the case of the requirements for the construction of inland vessels (technical prescriptions for inland vessels), the existence of several legal regimes has more serious repercussions. The 1996 White Paper noted that "the existence in Europe of different sets of regulations on technical requirements for inland navigation vessels, complemented with different national legislation in this regard, has so far thwarted efforts towards arriving at reciprocal recognition throughout Europe of national ship's certificates without additional surveying of foreign vessels."[14] This conclusion was reiterated in the 2005 UNECE Inventory of existing legislative obstacles that hamper the establishment of a harmonized and competitive pan-European inland navigation market".[15] Indeed, as illustrated in the annex, all inland navigation bodies maintain their own instruments on technical prescriptions, even if some instruments are more or less equivalent in their content.[16] Moreover, Article 22 of the Mannheim Convention required until recently that every vessel coming to the Rhine obtain a certificate from one of the CCNR member States.

39. The situation has largely evolved since 1996. The progressive alignment between the EU technical prescriptions directive (Directive 2006/87/EC laying down technical requirements for inland waterway vessels) and the CCNR requirements, as well as the adoption of the Seventh Additional Protocol to the Act of Mannheim which gives the CCNR the competence to recognize the ship's certificates from the EU and third countries, allowed the official recognition by the CCNR in May 2008 of the equivalence between the EU requirements and the CCNR Vessel Inspection Rules. The European Community ship's certificate, delivered in accordance with the EU Directive 2006/87/EC is, therefore, valid on most EU inland waterways, including the Rhine. With the EU enlargement, this system has extended its geographic scope to most European countries with inland navigation interests.

40. The issue remains, however, problematic as far as the non-EU States (which include a number of the Danube riparian countries) are concerned. The recognition of the non-EU member States' ship's certificate is subject to the additional measures to be adopted by EC under article 18 of Directive 2006/87/EC. This recognition is to take place on a case by case basis, as no international or regional legally binding instrument governs the technical prescriptions for inland vessels for the non-EU countries. The UNECE Resolution No. 61 with the "Recommendations on Harmonized Europe-wide Technical Requirements for Inland Navigation Vessels" sets pan-European standards in the area and is used as a basis for the DC requirements. The resolution provides a mechanism for the recognition of non-EU certificates, as long as the equivalence, to the largest extent possible, between the resolution and the EU Directive is ensured. But to this day, this mechanism stays largely under-used.

41. The situation is to some extent similar when it comes to the recognition of the boatmasters' certificates, as each inland navigation regime included specific provisions in this regard and, until recently, a special Rhine boatmaster certificate was necessary for navigating on the Rhine. However, the 2009 revision of UNECE Resolution No. 31 on

[14] UNECE, *White Paper on Trends on and Development of Inland Navigation and its Infrastructure*, 1996, TRANS/SC.3/138 (hereafter, *the 1996 UNECE White Paper*), para. 72.

[15] *The 2005 UNECE Inventory of existing legal obstacles*, pp. 10–13.

[16] DC Recommendations in this area have, since the beginning, been drafted on the basis of the provisions of Resolution No.61 of the UNECE.

"Minimum Requirements for the Issuance of Boatmasters' Licenses in Inland Navigation with a view to their Reciprocal Recognition for International Traffic" and the related expert studies,[17] confirmed the convergence of the existing EU, UNECE and River Commission requirements as to the minimum age, professional experience, professional knowledge and physical and mental fitness of the candidates. Moreover, in 2003 the CCNR initiated the recognition process of the boatmasters' certificates delivered by non-CCNR countries, as foreseen by Additional Protocol No. 7 to the Revised Convention for Rhine Navigation. The recognition is granted on a case-by-case basis and is subject to a number of conditions, such as an additional certificate of sector knowledge and medical certificates for persons more than 50 years old. However, at the present time a single EU boatmaster certificate does not exist. Moreover, for those waterways where special knowledge of local navigational conditions is required (both within and outside of the EU), methods must be agreed upon for candidates for boatmaster's certificates to acquire and to prove they have that knowledge in a simple way and at a low cost.

42. Regarding the transport of the dangerous goods on inland waterways, the 1996 UNECE White paper noted the absence of a pan-European Convention or other instrument of a binding character and referred to the various UNECE, CCNR and DC instruments. Since then, the rules on the transport of dangerous goods on inland waterways have been codified in the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), done in Geneva on 26 May 2000 under the auspices of UNECE and the CCNR. The agreement, which entered into force on 29 February 2008, provides a harmonized legal framework on the main aspects of the transport of dangerous goods, including provisions concerning dangerous substances and articles, provisions concerning their carriage in packages and in bulk on board inland navigation vessels or tank vessels, as well as provisions concerning the construction and operation of such vessels. As of July 2010, fourteen States are Contracting Parties to ADN.

43. Another new development since 1996 is the appearance of the norms and regulations for the River Information Services (RIS), i.e. the harmonized information services to support traffic and transport management in inland navigation, including interfaces to other transport modes. Taking into account the variety of available technological solutions (VHF radio, mobile data communication services, GNSS, internet, etc.), the emphasis in RIS is on services provided in facilitating information exchange between parties in inland navigation, such as fairway information services, traffic information services, traffic management, calamity abatement reports, information for transport logistics and information for law enforcement, etc. Internationally harmonized standards on general RIS framework and specific RIS tools, such as Inland Electronic Charts Display and Information System (Inland ECDIS), electronic ship reporting, electronic data transmission to skippers, inland Automatic Identification (AIS) systems, elaborated and maintained by the international expert groups, constitute the basis of the existing EU, UNECE and River Commission instruments in this area.

44. Another inland navigation issue, namely, recreational navigation, has become increasingly important in the last decade, especially in terms of regional development. So far, the issue has been dealt with mainly either on a national level or in UNECE Resolutions, such as Resolution No. 52 on the European Recreational Inland Navigation Network and Resolution No. 40 on the International Certificate for Operators of Pleasure Craft, although some aspects of recreational navigation are covered by rules of the road and technical prescriptions for inland vessels.

[17] EC, DG TREN, *Final Report of the Impact Assessment and Evaluation study on a "Proposal for a legal instrument on the harmonization of boatmaster's certificates in inland waterway transport"* (2009).

4. Civil and public law aspects of inland water transport operations

45. A number of international conventions on the civil and public law aspects of inland water transport operations have been elaborated under the UNECE auspices with a view to facilitating international inland water transport operations and minimizing the risks of carriers.

46. The 1960 Convention relating to the Unification of Certain Rules concerning Collision in Inland Navigation governs the compensation for damage caused by a collision between vessels of inland navigation, either to the vessels or to persons or objects on board in the waters of one of the Contracting Parties. It also governs compensation for any damage caused by a vessel of inland navigation in the waters of one of the Contracting Parties, either to other vessels of inland navigation or to persons or objects on board such other vessels, through the carrying out of, or failure to carry out a manoeuvre, or through failure to comply with regulations, even if no collision has taken place. It came into force in 1966 and ten European countries are Parties to this convention.

47. The 1965 Convention on the Registration of Inland Navigation Vessels lays down the conditions for registration of inland navigation vessels, for the transfer of a vessel from the register of one Contracting Party to the register of another Contracting Party and for the cancellation of a registration. Two Protocols are annexed to this Convention: Protocol No. 1 concerning the Rights *in rem* in Inland Navigation Vessels and Protocol No. 2 concerning the Attachment and Forced Sale of Inland Navigation Vessel. The Convention has been in force since 1982 and has been ratified by six European countries.

48. The 1966 Convention on the Measurement of Inland Navigation Vessels provides for a procedure of measurement of inland navigation vessels as well as the modality of certificates to be issued by measurement offices designated in the territory of each Contracting Party. The measurement of a vessel is designed to determine its maximum permissible displacement and, where necessary, its displacements corresponding to given waterlines. The measurement of vessels intended for the carriage of goods may also have the purpose of enabling the weight of the cargo to be determined from the vessel's draught. The Convention entered into force in 1975 and twelve European countries are Contracting Parties to it.

49. Several conventions, including the 1973 Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN), the 1976 Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN) and the 1959 Convention on the Contract for the Carriage of Goods by Inland Waterways (CMN), have never been adopted or have never entered into force due to an insufficient number of ratifications. Thus, as recently as in 2005, experts considered that the civil law applicable to inland water transport operations (contract law, liability rules) was mostly national in character and was not harmonized at the international level.[18]

50. In this area, major progress was achieved with the entry into force of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI). This convention, elaborated under the auspices of UNECE, the CCNR and DC on 3 October 2008 and deposited with the Government of the Republic of Hungary, entered into force on 1 April 2005. CMNI establishes uniform rules concerning contracts for the carriage of goods by inland waterway, such as rights and obligations of the contracting parties, transport documents, the right to dispose of goods, liability of the carrier, claim periods and limits of contractual freedom. The convention counts fourteen Contracting Parties as of July 2010.

[18] *The 2005 UNECE Inventory of existing legal obstacles*, para. 66; EFIN Study, para. 46.

51. Moreover, the CCNR is currently working on an additional protocol to the 1988 Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), whose goal is to extend the CLNI liability regime, with the necessary amendments, to the non-CCNR countries.

5. Environmental aspects of inland navigation

52. While it is generally recognized that IWT is the most environmentally friendly mode of transport, compared to other modes of transport, the development needs of inland navigation encounter increasing opposition, due to the concern for the preservation of the natural state of rivers and related ecosystems.

53. In the majority of cases, except for the Sava river, the environmental protection of the most important river basins in Europe has been entrusted to special river protection commissions, such as the International Commission for the protection of the Danube River (ICPDR) and the International Commission for the Protection of the Rhine, which do not address specifically the issue of navigational needs. The River navigation Commissions (CCNR, DC and the Sava Commission), however, are paying increasing attention to main environmental aspects of inland navigation, such as the prevention of pollution from inland vessels, waste management and the impact of infrastructure development on environment.

54. The issues of pollution prevention and waste management are addressed by several UNECE and River Commission instruments, such as special resolutions, the relevant provisions of the technical prescriptions for vessels and rules of the road. The CCNR imposed a general ban on discharging polluting substances in the Rhine and developed a special convention to regulate waste disposal issues (the 1996 Convention on Collection, Retention and Disposal of Waste Generated during Navigation on the Rhine and Other Inland Waterways). DC adopted in 2007 the recommendations on how to organize the collection of waste from vessels navigating on the Danube, which prohibits the discharge of polluting substances in the Danube. The same prohibition exists in Chapter 9 "Prevention of pollution of water and disposal of waste occurring on board vessels" of the European Code for Inland Waterways (UNECE Resolution No. 24). In May 2009, the Sava Commission prepared for signing a special Protocol to the Framework Agreement on the Sava River Basin on the prevention of water pollution caused by navigation, which foresees the establishment of a network of reception stations for waste from vessels in ports on the Sava River.[19]

55. The issue of the impact of infrastructure development is much more complicated and its significance largely depends on the current state of the infrastructure on a specific waterway, creating more tensions on the waterways, that still need to undertake work to improve navigation conditions, such as the Danube and the Sava river, as opposed to the Rhine, where most major infrastructure projects have been completed in the past centuries.

56. The UNECE and EU have addressed issues related to the environmental impact assessment of navigation projects through such instruments as the Convention on Environmental Impact Assessment in a Transboundary Context, the EU directives on the Environmental Impact Assessment (85/337/EEC) and on Strategic Environmental Assessment (2001/42/EC), as well as the Directive 2000/60/EC establishing a framework for the Community action in the field of water policy. These instruments establish such principles as public and intergovernmental consultations at an early stage of planning

[19] International Sava River Basin Commission, Sava NewsFlash, No. 3, May 2009, p. 11.

infrastructure projects and strategic planning for river basin management and development.[20]

57. The Sava Commission in cooperation with DC and the International Commission for the protection of the Danube River developed and adopted in 2009 a Joint Statement on Guiding Principles on the Development of Inland Navigation and Environmental Protection in the Danube River Basin. The Commissions are currently working on a practical manual on Good Practices in sustainable waterway planning.

58. Improvement of the environmental performance of inland navigation is also part of the EU "NAIADES" program, which plans to elaborate an indicative development plan for the improvement and maintenance of inland waterways and ports taking into consideration environmental and other requirements, building on the ongoing dialogue between the international navigation and protection commissions for the Rhine and the Danube.

59. At the present time, however, no international legal instrument provides a practical mechanism for managing the (eventual) tension between environmental concerns and navigational needs at the pan-European level.

B Further development of the regulatory framework for inland navigation

60. The 1996 UNECE White paper analyzed the legal regimes of inland navigation, as well as the existing technical and safety requirements and emphasized the need for unification of the navigation regimes to make inland water transport competitive.[21]

61. As shown in the previous paragraphs, there has been significant progress in this area since the publication of the first UNECE White paper. Perhaps, the most significant changes in the inland navigation regulatory framework have been the emergence of truly pan-European legally binding rules in areas such as the identification of the network of inland waterways of international importance (the AGN Agreement), the transport of dangerous goods (the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways) and unified rules on the contracts for the carriage of goods by inland waterway (the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway). These international conventions stemmed from the joint work of the UNECE and River Commissions and they are open to participation by all UNECE member States. Moreover, as illustrated above, in the areas where no pan-European unifying legal instrument has been introduced (such as the technical and safety requirements applicable to IWT) harmonization took place on the "substance" level and in the area of mutual recognition mechanisms.

62. However, the need for further development of the inland navigation regulatory framework is continuously reaffirmed both by experts and policy-makers.

63. In 2005, the UNECE *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* prioritized a series of obstacles of legal nature, including:

- 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);

[20] For more details, see ECMT Report, Inland Waterways and Environmental Protection, Paris, 2006.

[21] *The 1996 UNECE White paper*, pp. 16–17.

- 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.

64. The most recent pan-European Ministerial conference on Inland Navigation in Bucharest in September 2006 resulted in a Ministerial Declaration which identified the following priorities with respect to the advancement of the regulatory framework of inland navigation in Europe:

- Maintaining harmonization of technical requirements for inland waterway vessels, achieved through establishing equivalency between the rules of different organizations;
- Facilitating the free movement of crew members Europe wide and mutual recognition of boatmaster licenses;
- Rationalization of the requirements for the specific knowledge and experience needed for the navigation on certain river stretches;
- Harmonizing job descriptions and creating a European network aiming at the facilitation of exchanges on national educational programmes and vocational training;
- Supporting the ongoing harmonization of civil law in order to facilitate the full utilization of inland waterway transport in Europe through the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway and the Strasbourg Convention on the limitation of liability in inland navigation;
- Coordinating and facilitating exchange of information between national authorities should be further strengthened, with the purpose of facilitating the inspection of vessels and avoiding duplication in controls.

65. The areas identified by the Bucharest Ministerial declaration are dealt with by the existing inland navigation regimes and the declaration calls mostly for the improvement/harmonization or the maintenance of the already existing legal regimes. The priorities identified in the declaration were endorsed by the UNECE Inland Transport Committee at its sixty-ninth session in February 2007.[22]

66. The above-mentioned EC "NAIADES" programme aims to improve the administrative and regulatory framework for inland navigation through, *inter alia*, screening for barriers in existing and new European and national legislation and the harmonization of manning requirements, vessels and boatmasters' certificates, intermodal documentation, liability and loading units.

67. Synergy between the inland navigation institutions is essential to successfully carry out the tasks necessary for the development of inland navigation along the entire network of the European inland waterways. In this sense there is an undeniable need for a Pan-European vision for efficient and sustainable inland water transport.

[22] UNECE Inland Transport Committee, *Resolution No. 258 containing the plan of action for the implementation of the decisions taken by the pan-European Conference on Inland Water Transport*, 2007, (ECE/TRANS/192, Annex II).

Annex

Content of European inland navigations regimes

Note: Instruments that are not legally binding are highlighted in italics. N/A indicates the absence of recommendations or regulations.

Content of the regulatory framework	UNECE	EU	CCNR	DC	SC	MC
1. Standards and parameters of the European inland waterways	European Agreement on Main Inland Waterways of International Importance (AGN), done in Geneva on 19 January 1996	N/A	N/A	N/A	N/A	N/A
2. Access to market	N/A	EU regulations (EEC) 3921/91 and (EC) 1356/96	Act of Mannheim (as amended by Additional Protocol No. 2)	The Belgrade Convention		
3. Technical and safety requirements						
3.1 Rules of the road	*Resolution No. 24 – CEVNI: European Code for Inland Waterways*	N/A	Police Regulations for the Navigation of the Rhine	*Basic Rules of Navigation on the Danube*	Navigation Rules on the Sava River Basin (Decision – 30/07)	Police Regulations for the Navigation of the Mosel
3.2 Technical requirements for inland vessels	*Resolution No. 61 – Recommendations on Harmonized Europe-Wide Technical Requirements for Inland Navigation Vessels*	Directive 2006/87/EC laying down technical requirements for inland waterway vessels	Rhine Vessel Inspection Regulation	*Recommendations on Technical Requirements for Inland Navigation Vessels.*	*Technical Rules for Vessels in the Sava River Basin*	N/A
3.3 Minimum requirements for issuing the boatmasters' certificates	*Resolution No. 31 – Recommendations on Minimum Requirements for the Issuance of Boatmaster's Licences in Inland Navigation with a view to their Reciprocal Recognition for International Traffic*	Council Directive 96/50/EC on the harmonization of the conditions for obtaining national boatmaster's certificates for the carriage of goods and passengers by Inland Waterway in the Community (1996)	The Rhine Patent Regulation of the Central Commission for the navigation on the Rhine (CCNR)	*The Danube Commission (DC) Recommendations on the Establishment of Boatmasters' Licences on the Danube (1995).*	Rules on minimum requirements for the issuance of boatmaster's licences on the Sava river basin (Decision – 32/07)	N/A
3.4 Requirements on transport of dangerous	European Agreement concerning the	Directive 2008/68/EC of the European Parliament and of	Regulations for the transport of dangerous	*Regulations for the transport of*		Dangerous Goods

goods	International Carriage of Dangerous Goods by Inland Waterways concluded at Geneva on 26 May 2000	the Council of 24 September 2008 on the inland transport of dangerous goods	substances on the Rhine	*dangerous substances on the Danube*		Regulations
3.5 River information services	*Resolution No. 57 – Guidelines and Recommendations for River Information Services*	Directive 2005/44/EC on harmonized river information services (RIS) on inland waterways in the Community	*PROTOCOL 22, Guidelines and Recommendations for River Information Services (2001–II–19*)			
3.6 Recreational navigation	*Resolution No. 40 – International Certificate for Operators of Pleasure Craft*					
4. Civil and public law aspects of inland water transport operations						
4.1 Contract for the carriage of goods	Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)		Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)	Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)		
4.2 Limitation of liability in inland navigation			The 1988 Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI)			
4.2 Rules concerning collision of inland vessels	Convention relating to the Unification of Certain Rules concerning Collisions in Inland Navigation, of 15 March 1960					
4.3 Registration of inland vessels	Convention on the Registration of Inland Navigation Vessels, of 25 January 1965	Directive 2006/87/EC laying down technical requirements for inland waterway vessels	Police Regulations for the Navigation of the Rhine			
4.4 Measurement of inland vessels	Convention on the Measurement of Inland Navigation Vessels					

5. Environmental aspects of inland navigation						
5.1 Pollution by inland vessels	*Resolution No. 21 – Prevention of Pollution of inland Waterways by vessels*		Rhine Police Regulations (article 1–17)	*Recommendation on the prevention of pollution caused by navigation*	*Protocol on the prevention of water pollution caused by navigation (not yet in force)*	
5.2 Waste management	*Resolution No. 24 – European Code for Inland Waterways (Chapter 9: Prevention of Pollution of Water and Disposal of Waste Occurring on Board Vessels)*		The 1996 Convention on Collection, Retention and Disposal of Waste Generated during Navigation on the Rhine and Other Inland Waterways	*Recommendations on organization of the collection of waste from the vessels navigating on the Danube (CD/SES 68/10)*	*Protocol on the prevention of water pollution caused by navigation (not yet in force)*	
5.3 Environmental impact of IWT infrastructure development	Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention)	Environmental Impact Assessment Directive 85/337/EEC; Strategic Environmental Assessment (SEA) Directive 2001/42/EC; Directive 2000/60/EC establishing a framework for the Community action in the field of water policy				