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Working Party on Inland Water Transport

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Item 9 (a) of the provisional agenda

**HARMONIZED PROCEDURE FOR CONSIDERATION OF APPLICATIONS FOR
RECOGNITION OF SHIP'S CERTIFICATES AND BOATMASTERS' LICENSES: MUTUAL
RECOGNITION OF SHIP'S CERTIFICATES**

Note by the secretariat

I. INTRODUCTION

1. It is recalled that at its forty-ninth session, the Working Party had approved a report by the group of Volunteers on Legislative Obstacles on "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.3/2005/1).

2. The report listed the existence of different regimes for technical requirements for vessels (CCNR Regulation on the Survey of Rhine Vessels, EU Directive 82/714/EEC, the Recommendations on Technical Requirements for Inland Navigation Vessels of the Danube Commission) as one of the obstacles. While noting that the difficulties connected to the coexistence of various technical regimes and the issue of mutual recognition of ship's certificates would be reduced, to some extent, by the EU enlargement and by the application of the Additional Protocol No. 7 to the Act of Mannheim, the report recommended that UNECE, EU and River Commissions elaborate a harmonized procedure to ensure a common, non-discriminatory approach to the consideration of applications for recognition of ship's certificates.

This same procedure could also be used for the assessment of applications for the recognition of boatmasters' licenses (TRANS/SC.3/2005/1, para. 42).

3. Based on the recommendation of the Group of Volunteers on Legislative Obstacles, the Working Party SC.3, at its forty-ninth session decided to include the question of recognition of ship's certificates and boatmaster's licenses throughout Europe in its Programme of Work and forwarded the issue to SC.3/WP.3. The Working Party noted that the CCNR draft Procedure and Conditions for the Recognition of Ship's Certificates and Boatmasters' Licenses (TRANS/SC.3/2005/5/Add.1) could be used as a potential basis for the relevant UNECE instrument (ECE/TRANS/SC.3/168, para.15).

4. At its thirty-first session, SC.3/WP.3 considered the issue of elaboration of harmonized procedure for consideration of applications for recognition of ship's certificates and boatmasters' licenses and reviewed document TRANS/SC.3/2005/5/Add.1. SC.3/WP.3 noted that further information on the countries' and River Commissions' experience in recognizing foreign ship's certificates and boatmasters' licenses should be collected and recommended that the Working Party set up a group of volunteers on this issue (ECE/TRANS/SC.3/WP.3/62, paras. 21-22). This decision was endorsed by the SC.3 fifty-first session (ECE/TRANS/SC.3/178/para.26).

5. At its thirty-second session, SC.3/WP.3 took note of documents ECE/TRANS/SC.3/WP.3/2008/6 and Add.1, presenting the relevant EC Directives, information received by Governments and the text of Resolution No.31. Noting that the majority of documents concerned the recognition of boatmasters' licenses, SC.3/WP.3 asked Governments and the River Commissions, especially, to submit information on the recognition of ship's certificates (ECE/TRANS/SC.3/WP.3/64, para.13).

6. At the SC.3/WP.3 thirty-third session, the CCNR reported that in December 2007 the CCNR had amended its Police Regulation and its Vessel Inspection Regulation allowing vessels to be provided with certificates other than those issued by CCNR member states. In addition, it had added an annex to the Inspection Regulation that in the future would list the certificates recognized by the CCNR and possible prerequisites for their recognition. The first recognition of certificates, those based on national regulations implementing the Directive 2006/87/EC on the technical requirements for inland navigation vessels, is expected later in 2008 (ECE/TRANS/SC.3/WP.3/2008/25). Based on this information, SC.3/WP.3 had a profound exchange of information on the current situation in the different river basins and on the use of Resolution No. 61 for ensuring the mutual recognition of ship's certificates and recommended that SC.3 present Governments with a recommendation that countries recognize the ship's certificates issued based on Resolution No. 61 (ECE/TRANS/SC.3/WP.3/66, para.23).

7. The draft address to Governments is presented in section II as a possible resolution by SC.3. It is prepared based on the above-mentioned CCNR draft Procedure and Conditions for the Recognition of Ship's Certificates and Boatmasters' Licenses (TRANS/SC.3/2005/5/Add.1). The Working Party may wish to consider the document, taking into account the more detailed regulations on the recognition of ship's certificates, which are being elaborated by the CCNR and which are presented in the addendum to this document.

II. HARMONIZED PROCEDURE FOR CONSIDERATION OF APPLICATIONS FOR RECOGNITION OF SHIP'S CERTIFICATES

Draft Resolution No.

The Working Party on Inland Water Transport,

Considering Resolution No. 61 containing Recommendations on Harmonized Europe-Wide Technical Requirements for Inland Navigation Vessels (ECE/TRANS/SC.3/172) and, in particular, the call to

Recalling the recommendation of the Inland Transport Committee that the Working Party should continue its efforts towards a full reciprocal recognition of ship's certificates and should, to this end, undertake updating the Recommendations on Technical Requirements for Inland Navigation Vessels (ECE/TRANS/97, paragraph 104),

Recalling further the Declaration adopted by the Pan-European Conference on Inland Waterway Transport (Bucharest, 13 – 14 September 2006) welcoming the progress made in the harmonization of technical requirements for inland waterway vessels, where equivalency has been established between the rules of different organizations, and calling the organizations concerned to ensure that equivalence is preserved in the future maintenance as these requirements evolve aiming at mutual recognition of ship certificates (ECE/TRANS/SC.3/2006/11, point 1),

Believing that the harmonization of national and international (within subregional groupings) technical requirements for vessels applied on European inland waterways would be of great benefit to international transport by inland waterway, the safety of navigation, the protection of human health and life, as well as the protection of the environment,

Bearing in mind the report of the Working Party on the Standardization of Technical and Safety Requirements in Inland Navigation on its thirty-third session (ECE/TRANS/SC.3/WP.3/66, para.23),

1. Recalls that Resolution No.61 requests Governments to accept the ship's certificate issued in accordance with the Recommendations annexed to the resolution as documentary evidence that the vessel complies with the Recommendations on Harmonized Europe-Wide Technical Requirements for Inland Navigation Vessels (as set out in document ECE/TRANS/SC.3/172 as amended) and to take it duly into account when issuing other certificates, if required, for given waterways. In this connection, technical inspection of the vessel may be wholly or partly dispensed with, in so far as regulations in force so permit,

2. Invites Governments to apply the annexed procedure and conditions for the recognition of ship's certificates issued by UNECE member States,

3. Invites Governments to inform the Executive Secretary of the Economic Commission for Europe whether they accept this resolution,

4. Requests the Executive Secretary of the United Nations Economic Commission for Europe to place the question of the application of this resolution periodically on the agenda of the Working Party on Inland Water Transport.

ANNEX

**PROCEDURE AND CONDITIONS FOR THE RECOGNITION OF SHIP'S
CERTIFICATES BY UNECE MEMBER STATES**

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 the regulations applicable to the inland waterways concerned.

- (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 regulations applicable to the inland waterways concerned.
- (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 regulations applicable to the inland waterways concerned, all certificates issued on the basis of full

compliance with these laws or regulations shall be recognized as valid on these waterways. 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 regulations applicable to the inland waterways concerned 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 the third country's legislation or regulations.

2. Procedure for review of applications

The recognition of regulations concerning ship's 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 and shall be considered by the competent body in the country or organization concerned.

The competent body 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 competent body 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 inland waterways concerned.

3. Updating the recognition of equivalence

As the regulations applicable to the inland waterways concerned develop, the risk exists that equivalence will no longer be ensured. It shall therefore be accompanied by a cooperation agreement guaranteeing the development of the legislation applicable to inland waterways 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 body withdraws the equivalence.

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 inland waterways concerned for new vessels or new certificate holders.

4. Checks

a) Checks by the authorities of the waterways concerned

The authorities of the waterways concerned 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 inland waterways concerned.

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.

b) Checks by the authorities issuing certificates

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.
