

Introductory note accompanying the publication of Prof. De Decker's legal opinion

The observations and opinions presented in this legal opinion are strictly those of its author and do not reflect the position of the Central Commission nor of its Member States.

Context of the handing down of the legal opinion

The CCNR commissioned this legal opinion from Prof. De Decker in September 2021. It was delivered at the end of November 2021. This opinion comprises two parts.

The first part (pp. 1-26) concerns the prohibition on the levying of duties, tolls and taxes under the current Rhine regime and aims in particular to analyse the legal relationship between the proposal for a Council directive restructuring the Union framework for the taxation of energy products and electricity (recast) published in July 2021 and the Rhine regime.¹

The second part (from p. 27 onward) concerns the legal feasibility, having regard to the Rhine regime, of a sector contribution based on fuel consumption and the vessel's emissions reduction performance.

This proposed contribution by the sector was developed in the context of the CCNR's study on the energy transition towards a zero emission IWT sector (research questions G and H)².

To evaluate the proposals developed in this study and their possible implementation, the Central Commission has, in its resolution 2021-I-6, instructed its Economic Committee, River Law Committee, Inspection Regulations Committee and its Committee for Infrastructure and Environment to examine the economic feasibility, technical, legal, and practical issues arising from the study.

As concerns the legal considerations, the relevant Committees decided that the introduction of a sector contribution should at all events be compatible with the relevant international agreements, notably the Mannheim Act, and that it was up to the CCNR to assess the compatibility of a sector contribution with the fundamental principles of the Mannheim Act.

Context of the proposal to introduce a sector contribution

The CCNR study is a wide-ranging consideration of how to finance the energy transition and proposes the creation of a financial mechanism based on public and private sources, including a sector contribution.

The proposal to introduce a sector contribution was prompted by the need to incentivise vessel owners to invest in emissions reduction technologies, while ensuring that such a contribution is reassigned to the inland waterway transport sector to support projects helping to reduce vessel emissions. In anticipation of the expected legislative changes which would require the sector to make a financial contribution to the energy transition (tax, integration with Emission Trading Schemes...), the idea of a sector contribution also aimed to prompt an extensive discussion on the most appropriate way for the sector to contribute to this transition. The sector could play a full part in developing the parameters of such a contribution instead of these parameters being imposed on it. Moreover, in the event of a contribution by the sector, the sector could have greater influence over the level of the contribution and the allocation of resources arising from it. In the event of a tax or other type of contribution, the financial impact for vessel owners could be higher and with no certainty as to how the resources would be allocated.

¹ COM/2021/563 final: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021PC0563>

² Research questions G and H on the potential of 'polluter pays' schemes in inland waterway transport and on requirements and boundaries considering level playing field and modal share: https://www.ccr-zkr.org/files/documents/EtudesTransEner/Deliverable_RQ_G_and_H.pdf