

Council Regulation (EEC) No 2919/85 of 17 October 1985 laying down the conditions for access to the arrangements under the Revised Convention for the navigation of the Rhine relating to vessels belonging to the Rhine Navigation

COUNCIL REGULATION (EEC) No 2919/85

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laying down the conditions for access to the arrangements under the Revised Convention for the navigation of the Rhine relating to vessels belonging to the Rhine Navigation

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the six Contracting States to the Revised Convention for the navigation of the Rhine, that is to say five Member States of the European Communities (Belgium, Germany, France, the Netherlands and the United Kingdom) and Switzerland amended that Convention by Additional Protocol 2 signed in Strasbourg on 17 October 1979;

Whereas the said Additional Protocol stipulates that only vessels belonging to the Rhine Navigation shall be authorized to transport merchandise and persons between two points situated on the navigable inland waterways referred to in the first paragraph of Article 3 of the Convention; whereas vessels are considered to belong to the Rhine Navigation if they carry a document issued by the competent authority;

Whereas the Protocol of Signature to the abovementioned Additional Protocol provides that the document certifying that a vessel belongs to the Rhine Navigation shall be issued by the competent authority of the State concerned only to vessels which have with that State a genuine link the constituent factors of which are to be determined on the basis of equal treatment between Contracting States to the Convention; whereas, under the terms of the Protocol of Signature, the same treatment must be accorded to vessels which have a genuine link with any Member State; whereas, to that effect, these other Member States are accorded equal status with the Contracting States to the Convention;

Whereas the Contracting States to the Convention have drawn up, within the Central Commission for the Navigation of the Rhine (CCR), implementing provisions determining the conditions under which the abovementioned document should be issued; whereas, by Decision of 8 November 1984, the Council, acting on a proposal from the Commission, defined the common action under which Member States which are Contracting Parties to the Convention adopted these provisions in the form of a resolution of the CCR;

Whereas, in order to ensure that the implementing provisions are put into effect throughout the Community, it is necessary to incorporate them into Community law by means of a Council Regulation adopted under Article 75 of the Treaty fixing the detailed rules required to take into account Community rules and procedures;

Whereas provision should be made for Member States to send the Commission a copy of the information they send the CCR in accordance with this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The provisions contained in the Annex shall be applicable in the Community in accordance with the provisions of this Regulation.

Article 2

1. For the purposes of implementing Articles 2 (4) and 8 (1) of the Annex, each Member State shall at the same time send to the Commission the information which it must send to the CCR under the terms of those provisions.

2. For the purpose of implementing the first sentence of Article 3 (4) of the Annex, the Member State concerned shall also forward to the Commission a copy of the dossier concerning its request for consultation of the CCR.

Article 3

If the CCR should envisage establishing the general conditions referred to in the second sentence of Article 3 (4) of the Annex, the Council, acting by a qualified majority on a proposal from the Commission, shall decide on the joint position to be adopted within the CCR by the Member States which are also Contracting Parties to the Convention.

These conditions will be introduced in the appropriate way at Community level by the Council acting in accordance with the arrangements set out in the first paragraph.

Article 4

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

However, Article 7 (2) of the Annex shall not apply until 1 February 1987.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 17 October 1985.

For the Council

The President

J. F. POOS

(1) OJ No C 262, 14. 10. 1985.

(2) OJ No C 169, 8. 7. 1985, p. 7.

ANNEX

REGULATION IMPLEMENTING

the provisions of the third paragraph of Article 2 of the Revised Convention for the navigation of the Rhine and of paragraphs 1 and 3 of the Protocol of Signature of Additional Protocol 2 to the said Convention of 17 October 1979

Article 1

For the purpose of this Regulation the States referred to in the first sentence of paragraph 3 of the Protocol of Signature of Additional Protocol 2 of 17 October 1979 to the Revised Convention for the navigation of the Rhine shall be accorded equal status with the Contracting States of the said Convention. The expression 'Contracting State' in this Regulation shall always include each of those States as are accorded equal status.

Article 2

1. The authorities of the Contracting State in which a vessel is registered in a public register shall alone be competent to issue and withdraw the document provided for in the third paragraph of Article 2 of the Revised Convention for the navigation of the Rhine, establishing that the vessel belongs to Rhine navigation.

2. In the absence of a public register or in the event of a vessel not being registered in a Contracting State, the authorities of the Contracting State in which the owner of the vessel or, in the case of joint ownership, the first joint owner to apply for the document referred to in the preceding paragraph to be issued, has his domicile, usual residence or registered office shall be competent to issue, cancel and withdraw the said document.

3. The 'document' may take the form either of a special document in accordance with the third paragraph of Article 2 of the Revised Convention for the navigation of the Rhine or of an entry on another document already issued for the vessel, to the effect that the vessel belongs to Rhine navigation.

4. Each Contracting State shall make known to the other Contracting States, through the Central Commission for the navigation of the Rhine, a list of its designated competent authorities.

Article 3

1. The document referred to in the first paragraph of Article 2 shall not be issued for a vessel unless the owner of that vessel:

(a) as a natural person, is a national of one of the Contracting States and has his domicile or usual residence in a Contracting State; or

(b) as a legal person governed by public law, is established under the laws of a Contracting State and has its registered office in that State; or

(c) as a legal person or a company or firm governed by private law;

(aa) is established in a Contracting State under its laws;

(bb) has its registered office, its principal place of business and the place from which the vessel is operated in that Contracting State, and

(cc) is managed and directed by persons the majority of whom are nationals of Contracting States and who have their domicile or usual residence and, in the case of legal persons, their registered office, in one of those States.

2. However, no document shall be issued in respect of a vessel belonging to a legal person or a company or firm governed by private law either if it is so constituted that the persons holding directly or indirectly a majority share in the beneficial ownership of the undertaking or holding the majority of shares conferring voting rights or the majority of voting rights, are not nationals of Contracting States or do not have their domicile, registered office or usual residence in one of those States.

3. In the case of trusts or similar arrangements, the conditions laid down above must also be fulfilled in respect of the persons on whose behalf such transactions are performed.

4. A Contracting State may exceptionally, after consulting the Central Commission, grant exceptions to the majority required in paragraphs 1 (c) (cc) and 2 above on condition that the objective of Additional Protocol 2 to the Revised Convention for the navigation of the Rhine is not affected. The Central Commission may establish the general conditions under which these exceptions will be granted.

Article 4

1. In the case of a vessel under joint ownership, a joint owner or joint owners who hold a majority share in the joint ownership and who manage the joint ownership must fulfil the conditions set out in Article 3.

2. If there are legal persons or companies of firms governed by private law among the joint owners concerned, the persons who manage and direct those undertakings and the persons who hold directly or indirectly a share in their beneficial ownership must all be nationals of Contracting States and have their domicile, registered office or usual residence in one of those States.

Article 5

1. The operator of a vessel must also fulfil the same conditions as the owner in order to obtain the document referred to in the first paragraph of Article 2 for the vessel which he is operating.

2. The authorities of the Contracting State in which the operator has his domicile or usual residence, or in which the registered office of the undertaking is situated, shall be competent to issue and withdraw the relevant document.

Article 6

1. The owner, joint owner or operator of a vessel shall apply to the competent authority for the document referred to in the first paragraph of Article 2 to be issued and shall furnish all true and necessary information to that end.

2. The owner, joint owner or operator of the vessel, in so far as it relates to him, must inform the competent authority which issued the document, immediately and in writing, of any change in the circumstances on the basis of which the document was issued.

3. The competent authorities may at any time verify whether the conditions laid down in Articles 3, 4 and 5 are still fulfilled; if they are not, they shall withdraw the document.

Article 7

1. The document certifying that the vessel belongs to Rhine Navigation must identify the vessel, its owner and, where appropriate, the operator by stating inter alia:

- the name, number, place of registration, type and category of the vessel,
- the name, business name, domicile, usual residence or registered office of the owner and, where appropriate, of the operator.

2. The document must be kept on board the vessel and must be produced on demand to the inspecting authorities.

Article 8

1. The Contracting States shall adopt the provisions necessary to give effect to this Regulation, in particular as regards the procedure and the burden of proof. These provisions shall be notified to the other Contracting States through the Central Commission for the Navigation of the Rhine.

2. To ensure application of this Regulation, the competent authorities of the Contracting States shall cooperate within the framework of their national legislation and shall communicate the necessary information to one another, subject to commercial confidentiality.

Article 9

1. This Regulation shall enter into force on the day on which Additional Protocol 2 to the Revised Convention for the navigation of the Rhine, signed at Strasbourg on 17 October 1979, enters into force.

2. The provision contained in Article 7 (2) of this Regulation shall, however, apply only on the expiry of a transitional period of two years from the date of entry into force.

3. This Regulation may be amended or supplemented according to the same procedure by which it was enacted.