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Proposal for a

COUNCIL DECISION

authorising Austria, Belgium and Poland to ratify, or to accede to, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Commission proposes that the Council authorizes Austria and Poland to ratify, or to accede to, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) (the "Budapest Convention"). The Budapest Convention has been adopted by the Diplomatic Conference organised jointly by the Central Commission for the Navigation of the Rhine and the Danube Commission in collaboration with the United Nations Economic Commission for Europe.

The Budapest Convention, entered into force on 1 April 2005, has proven to be a great success and contributes to the internal market in the field of transport. It is intended to harmonize contractual and inland navigational standards among European countries. Eleven of the Member States of the Union, namely Belgium¹, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands, Romania, Slovakia are already Contracting Parties to this Convention. Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Slovenia, Spain, Sweden and United Kingdom have indicated to the Commission that they do not have inland waterways covered by the scope of the Budapest Convention.

Austria and Poland have expressed on several occasions their interest in becoming Parties to the Convention; indeed their participation will foster the broad implementation of this legal instrument with benefits for citizens and businesses.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The issue of the accession of Austria and Poland to the Budapest Convention has been discussed several times in the meetings of the Working Party on Civil Law Matters (General Questions).

Even those Member States which do not intend to become party to the Convention would support the Commission's initiative aimed at allowing Austria and Poland to ratify or to accede to the Budapest Convention.

The present proposal was also strongly promoted by the European Associations representing the inland navigation industry (European Barge Union and IVR-International Association for the representation of the mutual interests of the inland shipping and the insurance and for keeping the register of inland vessels in Europe-).

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 29 of the Budapest Convention contains provisions on the choice of law by the parties to a contract of carriage falling under the Convention. Those provisions affect the rules laid down in Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I)². Therefore, the Budapest Convention is an agreement falling partly under exclusive European Union competence. Member States cannot ratify or accede to it without a Union authorization (Article 2(1) TFEU).

¹ According to the UNECE website, Belgium has ratified the Budapest Convention on 5 August 2008, therefore after the entry into force of Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I).

² OJ L 177, 4.7.2008, p. 6.

The Commission observes that Belgium has ratified the Budapest Convention on 5 August 2008, after the adoption and the entry into force of the Rome I Regulation on 24 July 2008. It is therefore necessary to address the Union authorization also to Belgium, in order to rectify the current unlawful situation.

The Commission also notes that only some Member States have shown interest in being party to the Convention. Other Member States do not consider themselves to be concerned as they consider not having inland waterways which would be covered by the scope of the Budapest Convention. Moreover, the Convention does not provide for the possibility for the Union to become a party and in any event the Commission does not intend at this stage to propose to approve that the Union be bound by the Convention in any other way.

There is no uniform definition of inland waterways in the EU legislation concerning inland navigation. The scope of application of some directives or regulations with regard to waterways is regulated differently by each legal act. For example, Directive 2006/87/EC on technical requirements for inland waterway vessels³ contains a list of waterways to which the directive applies (Annex I). This list is based on notifications from Member States which declare where the directive should be applicable on their territories. On the other hand, Directive 96/50/EC on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community⁴ has a different system for determining which waterways are covered by the scope of the directive. In principle the directive applies to all waterways in the EU with the exemption of the Rhine and other water ways mentioned in Annex II to Directive 91/672/EEC.

The Union may exceptionally authorise one or several Member States to be party to the Convention. In this case the exclusive competence is limited to a single provision, and the authorisation does not constitute an obstacle to the implementation of the Union's external policy on judicial cooperation in civil and commercial matters. The request of Austria and Poland is in particular justified since other Member States became a party to the Convention before Regulation (EC) No 593/2008 was adopted. This authorization should be without prejudice to the exclusive competence of the Union, and tries to meet a very specific situation.

The Council Decision shall be therefore addressed only to Austria, Belgium and Poland.

Under Article 30 of the Budapest Convention, Contracting States have the possibility to make declarations on the scope of application of the Convention. The Member States concerned may, when acceding to the Convention, make the appropriate declarations allowed under its provisions which they deem necessary. The text of such declarations should be attached to the Council Decision. [...]

³ OJ L 389, 30.12.2006, p.1-260.

⁴ OJ L 235, 17.9.1996, p. 31-38

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 2(1) and 81(2), in conjunction with point (a) of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁵,

Whereas:

- (1) The Union is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.
- (2) The Budapest Convention on the contract for the carriage of goods by inland waterways (CMNI) (hereinafter "the Budapest Convention") is a valuable instrument to promote inland navigation across Europe.
- (3) The Union has exclusive competence at least with regard to Article 29 of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) in so far as those provisions affect the rules laid down in Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I)⁶.
- (4) The Budapest Convention is not open to participation by regional economic integration organisations. As a result, the Union is not in a position to become a Contracting Party to the Budapest Convention.
- (5) The Member States which have navigable inland waterways coming in the scope of the Budapest Convention should therefore be authorised to ratify or to accede to the Convention.
- (6) Eleven of the Member States of the Union, namely Belgium, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands, Romania, Slovakia are Contracting Parties to the Budapest Convention.
- (7) Belgium has ratified the Convention on 5 August 2008, therefore after the adoption of the Rome I Regulation. It is therefore necessary that the Council authorizes ex post Belgium to ratify the Budapest Convention.
- (8) Austria and Poland, which have navigable inland waterways coming in the scope of the Budapest Convention, expressed their interest in becoming Contracting Parties.

⁵ OJ C [...], [...], p. [...].

⁶ OJ L 177, 4.7.2008, p. 6.

- (9) The remaining Member States of the Union indicated that they do not have inland waterways covered by the Budapest Convention and thus they do not have an interest in ratifying or acceding to the Convention.
- (10) The Budapest Convention provides for a possibility for the Contracting States to make declarations with regard the scope of application of the Convention. Accordingly, Austria and Poland should, when acceding to the Convention, make the appropriate declarations allowed under its provisions which they deem necessary. The text of such declarations should be attached to this Decision.
- (11) The United Kingdom and Ireland are bound by Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) and are therefore taking part in the adoption of this Decision.
- (12) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

1. The Council hereby authorizes Austria, Belgium and Poland to ratify, or to accede to, the Budapest Convention on the contract for the carriage of goods by inland waterways (CMNI), subject to the conditions set out in Articles 2.
2. The text of the Convention is attached to this decision as Annex I.

Article 2

The Council hereby authorizes Austria and Poland to make the appropriate declarations allowed under the provisions of the Convention when ratifying or acceding to the Budapest Convention.

This Decision is addressed to Austria, Belgium and Poland.

Done at Brussels,

*For the Council
The President*