Implementing the decisions of the Rotterdam Pan-European Conference on Inland Water Transport

Mister Chairman, Ladies and Gentlemen,

1. Before informing you of the follow up by UNECE to the Rotterdam Conference, I would like to remind you, and I am sure there are in this room people who still remember this landmark event, that the very first Ministerial Conference dedicated exclusively to inland navigation issues was held in September 1991 in Budapest, organized by the Government of Hungary and the European Commission with the participation of UNECE.

2. Twenty-five nations represented at the Conference agreed then for the first time to coordinate their inland water transport policies with a view to further development and promotion of inland navigation on the Continent along the following lines:

   (i) Establishment of an adequate network of inland waterways of international importance;

   (ii) harmonization of technical and professional standards aimed at reciprocal recognition of national ship's certificates and boatmaster's licences; and

   (iii) building up an integrated all-European inland navigation system based on market principles.

3. As a result of this first Conference, UNECE put on its agenda as priority projects the elaboration, in cooperation with colleagues from EC and river commissions, of two legal instruments: (i) European Agreement on Main Inland Waterways of International Importance (AGN); and (ii) European Agreement on International Carriage of Dangerous Goods by Inland Waterway (ADN).

4. At the same time, the work was started on a complete revision of UNECE Technical Requirements for Inland Navigation Vessels with a view to ensuring such level of Pan-European unification in this field that the reciprocal recognition of ships' certificates issued on the basis of the internationally agreed standards could become possible.

5. Preparation of the Rotterdam Pan-European Conference on inland navigation matters was as you know initiated by the Government of the Netherlands in September 2000.
and was carried out within the Drafting Committee consisting of representatives of the Netherlands and Romania and of EC, UNECE, ECMT, CCNR and DC.

6. The Declaration adopted by the Conference comprises a list of main objectives and actions to be taken by Governments and international organizations concerned in order to accelerate in a concerted and coordinated way the development of inland waterway transport towards a safer, cleaner and more competitive Pan-European transport mode.

7. The Rotterdam Declaration identifies the main problems of the European inland navigation as follows: “inadequate infrastructure, legal procedures and lack of harmonization of fiscal, social and economic conditions for fair competition as well as of technical regulations, professional requirements and administrative procedures”. The Declaration admits that partly because of these obstacles, inland waterway markets at a Pan-European level are today still fragmented and partly closed to third country operators. (Preamble, sections J and K).

8. It has to be noted that the situation, as rightly reflected in the Declaration, is mainly the result of the development traditions of the European inland navigation which, until recently developed in a geographically fragmented way, being based on particular river basins and river systems.

9. The Rotterdam Declaration calls upon the intergovernmental organizations involved in inland navigation to take appropriate actions aimed at the development of a safe, clean and competitive European inland waterway transport. The UNECE as a regional organization of a Pan-European dimension dealing with legal, technical and safety issues in inland navigation is particularly suitable to tackle most of the items appearing in the Rotterdam Declaration.

10. That is why, already at its October 2001 meeting, the UNECE Working Party on Inland Water Transport considered and approved a comprehensive Plan of Action for the implementation of decisions taken by the Rotterdam Conference and set up a Group of Volunteer Experts with a view to preparing an Inventory of existing legislative obstacles that hamper the establishment of a harmonized and competitive Pan-European inland navigation market, as requested by the Rotterdam Declaration.

11. I should like to brief you on what has been achieved so far by UNECE member Governments in implementing the decisions taken by Ministers at the Rotterdam Conference.

(a) Infrastructure

(i) The AGN Agreement, that entered into force in 1999 and counts currently 13 Contracting Parties\(^1\) has become a most basic, most strategic tool for the development in Europe of a coherent network of inland waterways of international importance. The Inland Transport Committee adopted a resolution aimed at the

\(^{1}\) These are: Bulgaria, Croatia, Czech Republic, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Republic of Moldova, Romania, Russian Federation, Slovakia, Switzerland.
earliest possible implementation of this legal instrument. UNECE member Governments are considering possible amendment of the Agreement with a view to making its provisions more acceptable for countries which have not yet acceded to it, and emphasizing the importance of coastal and sea-river routes.

(ii) The so-called Blue Book has been elaborated and kept up to date, containing detailed target and current parameters of the E waterway network. The Blue Book, together with the Inventory of Most Important Bottlenecks and Missing Links in the E Waterway Network, are major tools for monitoring the development of the network throughout Europe.

(iii) Work is under way to develop concrete river-sea routes in the context of the AGN Agreement.

(iv) Common principles and technical requirements for a Pan-European River Information Service (RIS) have been adopted together with international standards for Inland ECDIS and Vessel Traffic Services (Inland VTS). Two more RIS related standards would be adopted in October this year, i.e.: on Electronic Ship Reporting and on Notices to Skippers.

(b) Legislative harmonization and access to the market

(i) The ADN Agreement elaborated by UNECE jointly with CCNR and DC and adopted in May 2000 has been signed by 10 States and has 4 ratifications. The Agreement will enter into force after its ratification by 7 States. ADN is a basic instrument for the safe carriage of dangerous goods on European inland waterways.

(ii) The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) elaborated jointly by UNECE, CCNR and DC and adopted at a Diplomatic Conference in 2000 has been signed by 16 European States and entered into force on 1 April 2005 after having been ratified by: Croatia, Hungary, Luxembourg, Romania and Switzerland. The Convention, for the first time, lays down a unified international legal regime for contractual responsibilities in inland navigation.

(iii) The European Code for Inland Waterways (CEVNI) was revised in 2002 and is applied Europe wide. CEVNI serves as a model for national and international (within river commissions) legislation relating to rules of the road, and signalling on inland waterways, night and daytime marking of vessels as well as waterway signs and marking.

(iv) The Signs and Signals on Inland Waterways (SIGNI) were revised in 2004 in order to put them in line with the revised CEVNI.

(v) After lengthy and difficult negotiations, Recommendations on Minimum Manning Requirements and Working and Rest Hours of Crews of Vessels in Inland
Recommendations on limitation of exhaust and pollutant particulate emissions from diesel engines used on inland navigation vessels have been adopted in 2004. They are compatible with both EC and CCNR provisions.

Technical Requirements for Inland Navigation Vessels have just been revised and put in line with the draft revised Directive 82/714/EEC. They take into account not only the Rhine rules but also national legislation and particularities of different river basins Europe wide including the River Danube. As expected, the new revised version of the Recommendations will be adopted by member Governments in October this year. In the meanwhile, the DC at its 64th plenary session in May 2005 agreed to align their own Recommendations with the revised UNECE provisions.

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 has been established by the Group of Volunteer Experts as a follow up to item 13 of the Rotterdam Declaration.

Organization of this very Workshop has been agreed upon at the 48th session of the Working Party on Inland Water Transport in October 2004 and organized jointly by ECMT, UNECE and two River Commissions with a view to preparing the forthcoming Pan-European Conference on Inland Water Transport in 2006 in Bucharest, Romania.

12. Finally, I would like to introduce to you the findings of the Group of Volunteers regarding the legislative obstacles that hamper the further development of inland waterway transport in Europe and possible ways for overcoming those obstacles. The report of the Group of Volunteers may be found in document TRANS/SC.3/2005/1 available at the Workshop and at the website of UNECE.

13. First, the report defines the “legislative obstacles” and classifies them into 7 different categories.

14. Before analysing each type of the obstacles, the report considers three scenarios for their possible elimination through the replacement of the current variety of regimes of navigation by a single one covering the whole of the European inland waterway network to be achieved either: (i) by establishing a new Pan-European governmental organization; (ii) by setting up a system of multilateral Pan-European agreements/conventions dealing with various aspects of inland water transport; or (iii) by making the European Community the pivot of international rule-making for inland waterway transport. The Group of Volunteers comes, however to a conclusion that such sweeping reorganization of the institutional landscape does not stand a large chance of being realized in the nearest future and proposes, therefore, that
the search for solutions be based on the assumption that the institutional landscape will remain as it is, without changes or shifts in formal competences of different intergovernmental bodies.

15. The following solutions are proposed by the Group of Volunteers with regard to each of the legal obstacles identified.

**Restrictions on transport rights of “foreign” vessels**

16. The restrictions contained in the Revised Convention on the Navigation of the Rhine (Act of Mannheim) as amended by the Additional Protocol No. 2 – which reserves the right to carry out transport operations between points situated on the Rhine and its tributaries to vessels “belonging to the Rhine navigation” was found to be clearly incompatible with the idea of an integrated Pan-European inland water transport market as postulated by the Rotterdam Declaration. A possible solution proposed by the Group of Volunteers is to let the Additional Protocol No. 2 stand as it is, but nevertheless to open up Rhine cabotage to vessels of all European States. Since the Act of Mannheim entitles the CCNR to specify the conditions under which vessels not belonging to Rhine navigation may participate in Rhine cabotage, the CCNR could lay down, as a general rule, that European vessels not belonging to Rhine navigation (in practical terms the vessels of States which are not EU Members) may carry out Rhine cabotage operations provided that (a) they can prove a “genuine link” with their country of origin, and (b) that this country of origin in its turn grants the right of cabotage on its territory to vessels belonging to Rhine navigation.

17. The restrictions in the existing Danube regime concern mainly the reservation of domestic transport (within national territories of riparian States) for vessels of their own fleet and rather vague interpretation of the principle of “freedom of navigation” as stipulated in article 1 of the Belgrade Convention. The Group proposes that, in the course of the on-going revision of the Belgrade Convention, it should be made clear that the only meaning of the notion of “freedom of navigation” which is consistent with a free market system is the one that allows inland water transport operators to conclude transport contracts with any firm or natural person who wants to use their services, irrespective of the nationality or the place of establishment of the former and the latter, and irrespective of the places of loading and unloading. Furthermore, the problems concerning national cabotage on the Danube could be solved within the framework of negotiations on accession of the European Community as a Contracting Party to the (revised) Belgrade Convention. The European Community and the Danube countries could use the negotiations on the Community’s accession to grant market access to national cabotage on the Danube to each other’s vessels, thus establishing the unity of the regime in this respect on the whole length of the river.

18. The Group found that the **EU navigation regime** is unclear as to the access of vessels of third States to the Community inland waterways and intra Community transport services. The Group proposes, therefore, to the EU to eliminate this problem by a renewed use of a mandate for negotiations between the EU and third countries on mutual inland navigation market access, given by the Council to the European Commission in 1992. The negotiation mandate referred to above could also be used to remove existing limitations on
transport rights contained in a number of bilateral inland water transport agreements concluded between EU Member States and non-EU European countries.

Restrictions on access to and use of inland waterways and ports

19. Restrictions of this type take place in some European States where foreign vessels are not allowed to enter national inland waterways. The Group believes that the Agreement on partnership and cooperation, concluded in 1994 between the European Communities and their Member States on one side and the Russian Federation on the other, could serve as a framework for at least partially eliminating that sort of obstacles.

Existence of different regimes for technical requirements for vessels

20. According to the Group of Volunteers, the difficulties connected to the coexistence of various technical regimes (EU, CCNR, Danube (based on UNECE recommendations), etc.) can largely be solved by a combination of three elements: (1) application of the Additional Protocol No. 7 to the Act of Mannheim allowing CCNR to recognize ship’s certificates (and boatmaster’s licenses as well) issued by EU and third countries, (2) the current revision of EU Directive 82/714/EEC laying down technical requirements for inland navigation vessels, and 3) the EU enlargement process.

21. To ensure a common, non-discriminatory approach to the consideration of applications for recognition of ship’s certificates, a harmonized procedure for such consideration could be elaborated and agreed upon by UNECE, EU and River Commissions.

Existence of different regimes for boatmaster’s licences

22. The situation with respect to boatmaster’s licences is comparable to that with respect to vessel’s certificates. In the absence of the possibility of unification of the regime by means of a Pan-European Agreement\(^2\), the solution will have to be found in a mutual recognition of licenses. This, in turn, presupposes harmonization between the underlying regulations, and some form of cooperation to keep them equivalent in case of amendment.

23. Cooperation, with a view to harmonizing regulations, already exists between the European Commission and CCNR and between the Danube Commission and CCNR with a view to future reciprocal recognition of relevant boatmasters’ licenses.

24. But it might be laborious work to keep the above regulations coordinated. So an alternative solution could be to invite UNECE to update its resolution No. 31 on Minimum Requirements for the Issuance of Boatmasters’ Licenses in Inland Navigation with a view to their Reciprocal Recognition for International Traffic, in collaboration with the European Commission and the two River Commissions, to make it serve as a common standard on which the Community, Danube and Rhine legislations could be based.

\(^2\) Some UNECE member Governments so far have opposed the adoption within UNECE of binding legal instruments on ships’ certificates and/or boatmasters’ licenses on the ground that they are bound by relevant CCNR and EU instruments and, therefore, will not be able to become Contracting Parties to a new Pan-European regime.
**Differences in regulations on the size and composition of crews, and on working and rest hours**

25. Differences in legal rules on the size and composition of crews can present obstacles in cases where vessels crossing a border are confronted with regulations prescribing larger or more highly qualified crews than prescribed in their country of origin. The Group felt that the Recommendation on Minimum Manning Requirements and Working and Rest Hours of Crews in Inland Navigation recently adopted within UNECE and compatible with CCNR rules, could provide a Pan-European standard. The Danube Commission, at its 64th plenary session in May 2005, agreed to base their Recommendations on the above-mentioned UNECE provisions.

**Restrictions on the freedom of pricing and contracting**

26. Within the EU, Directive 96/75/EC stipulates that contracts in national and international inland waterway transport “shall be freely concluded between the parties concerned and prices freely negotiated”.

27. A number of price controls and cargo sharing clauses occurring in bilateral inland water transport agreements between EU and non-EU countries have already become void after the recent enlargements of the EU. From the few remaining bilateral agreements which will ultimately remain in existence, price controls and cargo sharing arrangements can only be removed by the mutual consent of their Contracting Parties.

**Lack of rules on competition**

28. The Treaty establishing the European Community expressly prohibits all agreements between business firms, which have as their object, or effect, the prevention or restriction of competition. At the same time, the Agreements on partnership and cooperation between the European Community and its Member States, on the one hand, and several non-EU countries, on the other, may serve as frameworks for the development of competition law in those non-EU countries where this type of law is either nonexistent or insufficiently developed. The famous Bratislava Agreements of 1955 (concluded by Danubian Shipping Cos.) are currently in a process of change, making them lose the cartel-like elements they formerly contained.

**Insufficient harmonization of the civil and public law framework**

29. The Group of Volunteers noted and regretted a limited number of Contracting Parties to a number of international legal instruments in force on inland navigation issues, both of private and public nature. At the same time, some other Conventions elaborated within CCNR and UNECE failed to enter into force due to insufficient number of ratifications.

30. On the other hand, the Group noted a successful cooperation between UNECE and two river commissions that culminated in the adoption in 2000 of the Budapest Convention on
the Contract for the Carriage of Goods by Inland Waterway (CMNI) that entered into force on 1 April 2005.

**Restrictions on the freedom of movement of inland water transport workers**

31. Within the EU, citizens may freely take jobs in any country they like, while nationals of non-EU countries generally have only limited access to the labour markets of EU countries. Currently under discussion within the EU, is a draft directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. This draft directive maintains the principle now generally applicable in EU Member States: to get a job in a Member State, a third-country worker must obtain a work permit, which is issued only if it is demonstrated that the vacancy in question cannot be filled by a worker from within the EU. However, the draft directive allows Member States to adopt, for a limited but renewable period, provisions according to which this last requirement is deemed to be fulfilled, without the need for an individual assessment, for a specific sector confronted with a labour shortage. Member States could use this rule to alleviate labour shortages in the inland water transport sector.

32. The free movement of workers may also be hampered by visa obligations, which could make it difficult for sailors to join or leave their vessels in countries other than their own. This problem could be solved by means of a Pan-European agreement following an example of the Seafarers’ Identity Documents Convention recently adopted within ILO. But, in view of the relatively limited number of countries involved (most European countries nowadays admit each others’ nationals without imposing visa obligations, at least for stays of limited duration), it might be more efficient to solve the problem by means of an agreement or agreements between the Governments concerned, aiming at facilitating the entry of each other’s sailors into their territories. It might also be considered whether the scope of the ILO Seafarers’ Identity Documents Convention can be extended so as to include inland navigation.

**Restrictions on the right of establishment**

33. Within the EU, the freedom of establishment in the inland navigation sector exists: any EU citizen may establish an inland water transport business in any EU Member State he likes. For nationals of third countries there normally will be restrictions, laid down by the national laws of Member States. Authorization for the establishment of such businesses is generally granted only if this will favourably influence employment and/or the economic development of the Member State concerned.