

## **SPIN-TN, Working Group 3**

### **Integration of European Waterways**

Comments by Univ.-Prof. *Mag. Dr. Gerhard Muzak*

- 1) on number 12: on the Danube tolls and duties are a problem at the ponton bridge of Novisad. The taxes ships have (or had?) to pay for opening the bridge are illegal because Art 42 Belgrade Danube Convention does not allow taxes for transit.
- 2) on number 17: "Bratislava Agreements": Austrian law has not changed until now. The "Bundesgesetz über den zwischenstaatlichen Binnenschiffsverkehr auf Wasserstraßen (BGBl 1983/143, BGBl I 2002/32; federal act concerning the international traffic on waterways) provides a partition of the transport volume between the states and "their" shipping companies. This law is not applicable because it is not conform to primary European community law (Art 49 EC-treaty) and the Austrian constitution (freedom of working).
- 3) on number 17 and 22: A similar problem are the bilateral treaties between Austria on the one hand side and Germany and the Netherlands on the other hand side. They include restrictions of international traffic and the cabotage is subject to authorization. First is not in conformity with the principle of freedom of navigation, second with the regulation 3921/91. The priority rule of Art 307 EC is not applicable because these are treaties between member states and not between a member state and a third state. Nevertheless the states have to cancel these treaties. So such problematic treaties described in number 22 are existing not only in relation to the new member states.
- 4) on number 33 (especially fn 149): I don't see a real problem here: If Art 25 Danube Convention is interpreted in a way that cabotage is a strictly national matter this does not exclude a riparian state to allow the cabotage for vessels of certain states. Only for vessels of Member states there is no national legislative power; the regulation 3921/91 prevails.
- 5) on number 41 (old for new rules - regulation 718/1999): the question is if the new member states have to create funds. Principally the regulation 718/1999 is valid for the new member states too. Nevertheless the applicability of Art 3 which requires the creation of funds seems to be doubtful. The time limit has ended long before the accession of the

new member states. So which national reserve fund should be used in the case of serious disturbance of a market of a new member state?

- 6) on number 55-56: under the danube convention for me it seems clear that working permits are not necessary for employees of foreign vessels; but the freedom of navigation under the danube convention does not include cabotage (Art 25). Art 3 regulation 3921/91 is a good reason for the opinion that working permits are not necessary in this field too. Also I agree with Prof. De Decker that otherwise freedom of cabotage would be illusory in practice. In Austria the situation is clear because § 1 Abs 1 lit e AuslBG (law for employing foreigners) is generally not applicable for employees on river ships with the exception of companies with residence in Austria.
- 7) on number 62: I agree that the situation is very complex.
- 8) ad number 64: "freedom of navigation not clarified". The basic structures seem considerable clear but in some questions the river acts are based on different principles (for example concerning the cabotage). And some questions like the requirement of working permits are not regulated explicit but can be answered in a teleological way using general principles.