

# INTERNATIONAL AND REGIONAL ORGANISATIONS

## REVIEW AND ANALYSIS

---

---

### EUROPEAN UNION

---

#### REVISION OF STRASBOURG CONVENTION ON THE LIMITATION OF LIABILITY IN INLAND NAVIGATION

*Dr Anastasiya Kozubovskaya-Pellé<sup>1</sup>*

---

##### **Introduction**

With a view to improving the legal security of international river transport and to ensuring adequate compensation for parties suffering damage, the Diplomatic Conference on the revision of the Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI)<sup>2</sup> was organised under the auspices of the Central Commission for the Navigation of the Rhine (CCNR) in Strasbourg in September 2012.<sup>3</sup>

Representatives from 13 countries, including the Rhine and Mosel states, attended the Conference. These were Germany, Belgium, France, Luxembourg, the Netherlands and Switzerland, together with Austria, Bulgaria, Poland, Serbia and Slovakia, as well as a number of observers from Hungary, the Czech Republic, the European Transport Workers' Federation (ETF), the European Barge Union – Union Européenne de la Navigation Fluviale (EBU UENF), the IVR<sup>4</sup> and the Union of European Chambers of Commerce and Industry (UECC).<sup>5</sup> The Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012) was signed by 11 state parties on 27 September 2012.

The CLNI 2012 preserves the original framework of the 1988 Convention, as the instrument was not renegotiated in its entirety but only revised on several issues. The purpose of the revision was essentially to extend the scope of application of the CLNI to river transport on other major European waterways,<sup>6</sup> to re-evaluate and increase the limits of liability and thereby also to increase the protection afforded to passengers in inland navigation. The Diplomatic Conference also seized the opportunity to make minor readjustments to some other matters and definitions, such as, for example, the definitions of the persons entitled to limit their liability.

---

<sup>1</sup> Legal Expert for the Central Commission for the Navigation of the Rhine at the Diplomatic Conference for the revision of the Strasbourg Convention on the Limitation of Liability in Inland Navigation. Email nastiak@hotmail.com. The author would like to express her gratitude to Ms Cécile Tournaye, Legal Advisor at the Central Commission for the Navigation of the Rhine, for her contribution to this article.

<sup>2</sup> The original CLNI, signed in 1988 by the states parties to the CCNR and Luxembourg, ratified by Luxembourg, the Netherlands, Switzerland and Germany, entered into force in 1997. In 2007, the states parties launched the revision of this Convention.

<sup>3</sup> <http://www.ccr-zkr.org/>.

<sup>4</sup> International Association for the representation of the mutual interests of the inland shipping and the insurance sectors and for keeping the register of inland vessels in Europe.

<sup>5</sup> CCNR Press Release CC/CP (12) 09.

<sup>6</sup> The application of the original CLNI has been generally restricted to river transport on the Rhine and its tributaries.

### Persons entitled to limit liability

The mechanism of the limitation of liability in the original CLNI, and consequently in the CLNI 2012, draws its inspiration from the mechanism laid down in the Convention on Limitation of Liability for Maritime Claims (LLMC). The CLNI preserves the common law in rem concept by stating in its Article I(4) that the liability of a vessel owner shall include liability in an action brought against the vessel herself. The Convention enables the vessel owner (ie the owner, hirer or charterer entrusted with the use of the vessel, as well as the operator of a vessel), salvor (any person rendering services in direct connection with salvage or assistance operations) and insurer of liability for claims subject to limitation, but also any other person for whose act, neglect or default the vessel owner or salvor is responsible, to limit their liability by constituting a fund, the amount of which is determined in accordance with the provisions of the CLNI.

Even though the term 'bareboat charterer' is not expressly used in the definition of the persons entitled to limit liability, a bareboat charterer is definitely implied in the definition of the owner as 'charterer entrusted with the use of the vessel' (Article I(2)(a)). During the discussions of the Diplomatic Conference it was clearly stated that the definition of the vessel owner was not limited to legal ownership, and it was specifically stressed that a bareboat charterer was within the scope of application of the revised Convention. This approach is perfectly in accord with the maritime tradition aligning the mechanisms of liability of the legal and beneficial owners of the vessel.

The definition of the persons entitled to limit liability was subject to lengthy discussions during the work of the Drafting Committee and the Plenary Assembly of the Diplomatic Conference. The principal difficulty arose from the differences in legal interpretation of the terms in national legislations, dictionaries and the ordinal use of the words. For example, in the French version of the text the term *exploitant d'un bateau* (literally, operator of a vessel) appeared to be more acceptable to the majority of the delegates than the term *armateur*. The latter term has no equivalent in English. Etymologically it refers to the person who 'arms' or 'equips' a vessel for (commercial) navigation. We approve the choice of the term *exploitant* because it was acknowledged that the French law concept of *armateur* might seem confusing to non-French law practitioners. Even in French law the definitions given to this term by different laws are not exactly identical<sup>7</sup> and the High Court (*Cour de cassation*) affirms the duality of the concept of *armateur*,<sup>8</sup> distinguishing nautical *armateur* (he who 'arms' for navigation) and commercial *armateur* (he who 'operates' the vessel for commercial purposes). However, it is generally accepted that the concept of *armateur* is essentially related to the operation (in French *exploitation*) of the vessel, rather than to its ownership.<sup>9</sup>

### Re-evaluating the amounts of the limitation of the liability

The global amounts of the limits of liability have been doubled in comparison with the original CLNI. According to Article 6(1)(d) of the CLNI 2012: 'in no case shall the limits of liability be less than 400,000 units of account for claims in respect of loss of life or personal injury or less than 200,000 units of account for all other claims'.

In respect of claims arising for loss of life or personal injury to passengers of a vessel,<sup>10</sup> the limit of liability for such vessels was increased up to 100,000 units of account (instead of 60,000 in the original CLNI), multiplied by the number of passengers which the vessel is authorised to carry according to the vessel's certificate (Article 8(1)(a)); or, if the number of passengers which the vessel is authorised

<sup>7</sup> According to Article I of the French Law 69-8 of 3 January 1969, *armateur est 'celui qui exploite le navire en son nom, qu'il en soit ou non propriétaire'*. According to the French Maritime Labour Code, Article 2, *armateur est 'tout particulier, toute société, tout service public pour le compte desquels un navire est armé'*.

<sup>8</sup> Cass.com (26 October 1999) *Fatima*, *Droit Maritime Français* 2000 at 106.

<sup>9</sup> A Kozubovskaya-Pellé 'De la qualité juridique de transporteur maritime de marchandises: notion et identification' (2011) *PUAM* 47.

<sup>10</sup> Article 8(2) states: '2. Any claims brought by or on behalf of any person carried in that vessel:

- (a) under a contract of passenger carriage, or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods'.

to carry is not prescribed, the number of passengers actually carried by the vessel at the time of the occurrence (Article 8(1)(b)). The new Convention establishes a common minimum of the limitation at 2 million units of account (instead of 720,000 units of account in the CLNI 1988) and abolishes a maximum ceiling calculated in relation to the authorised number of passengers per vessel (less than 100 and 180 passengers and more than 180 passengers) (Article 8).

In its press release the CCNR underlines that this upgrading of the amounts for limitation of liability takes inflation and increases applied in maritime circles into account.<sup>11</sup>

Another novelty is the introduction of specific limits applicable to claims for damage arising from the carriage of dangerous goods (Article 7). The limit for dangerous goods claims is established as double the general limits (set out in Article 6), with a minimum of SDR 10 million. The original CLNI did not contain any specific provisions for the carriage of dangerous goods, save for the right for states (either on becoming signatories or subsequently) to exclude the application of the rules of the Convention in respect of claims related to dangerous goods, insofar as they are governed by an international convention or domestic regulations excluding the limitation of liability or setting limits of liability higher than provided for in this Convention (Article 18(b) of the original CLNI). This right to reservation related to dangerous goods claims has also been maintained in the new Convention.

### **Extending the scope of application of the Convention**

The CLNI 2012 is no longer a Rhine and Mosel Rivers Convention, as the revised instrument is now opened to all interested states. Therefore it extends the scope of application on the limitation of liability to river transport not only on the Rhine and Mosel rivers and their tributaries, but also to other major inland waterways, including the Danube, the Elbe, the Oder and the Save. As the Convention only lays down common ceilings on damages but does not determine the applicable liability regime, it is unlikely to come into conflict with states' own domestic regulations,<sup>12</sup> making it an attractive prospect for new entrants.

By extending the scope of the CLNI to all European States for whom inland navigation represents a significant economic activity, it purports to introduce a common legal regime for the limitation of liability of owners of inland navigation vessels on a Europe-wide basis.<sup>13</sup> Thus, it constitutes the first step towards the harmonisation of the law on civil liability in inland navigation.

The CLNI 2012 is now established in a single original in Dutch, English, French and German, each text being equally authentic (Article 22), which it is hoped will facilitate accession to the Convention by a greater number of States.

The Convention has been deposited with the Secretary General of the CCNR. It is open for signature at CCNR headquarters from 27 September 2012 to 26 September 2014. Belgium, France and Luxembourg signed the Convention at the end of the Diplomatic Conference on 27 September 2012, the Netherlands signed it on 29 November 2012 and Serbia on 18 January 2013. Article 17 of the Convention states that it will enter into force on the first anniversary following ratification by a minimum of four states or on the date that the 1988 Convention ceases to be in force, whichever is the later.

---

<sup>11</sup> CCNR Press Release (n 5) 2.

<sup>12</sup> UN Economic and Social Council ECE/TRANS/SC.3/2007/9 (3 August 2007) 4.

<sup>13</sup> *ibid* 1.