

DECREE-LAW NR. 40/2021
of June 1st

Summary: Ensures the implementation of Regulation (EEC) No. 2919/85, laying down the conditions for access to the arrangements under the Revised Convention for the Navigation of the Rhine.

Council Regulation (EEC) No. 2919/85 of 17 October 1985, hereinafter referred to as Regulation (EEC) No. 2919/85, determines 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, hereinafter referred to as the Convention, which established the Central Commission for the Navigation of the Rhine ("CCR") and which main mission is to promote the development and ensure the safety of the navigation on that river.

Portugal is not a party to the Convention, however, with the adoption of the Additional Protocol 2 to Convention, the "CCR" granted all Member States of the European Union access conditions to the Rhine identical to those of its Contracting States.

By virtue of the said Additional Protocol, 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 recognized through a document issued by the competent authority of the relevant State.

It is in this context that the Implementing Regulation annexed to Regulation (EEC) No. 2919/85, hereinafter referred to as the Implementing Regulation, determines that the Member States of the European Union shall be accorded equal status with the Contracting States of the Convention.

Although Regulation (EEC) No. 2919/85 is mandatory and directly applicable to the Member States, it is necessary to ensure its implementation into the national legal order. In fact, under the possibility that Portuguese flagged vessels intend to operate on the Rhine, it is urgent to create the necessary conditions for ship-owning companies or companies operating these vessels can do so in the same terms as other operators whose flag Member States have, in the meantime, adopted measures for the implementation of Regulation (EEC) No 2919/85 in the respective legal orders.

In this regard, it is important to appoint the competent authority for issuing the documents referred to under paragraph 1 of article 2 and paragraph 2 of article 5 of the Implementing Regulation, as well as to establish the sanctions applicable in case of breach of the obligations that result therefrom.

The relevant government bodies of the Autonomous Regions were heard.

Thus:

Pursuant to item a) of paragraph 1 of article 198 of the Constitution, the Government decrees the following:

Article 1

Object

This decree-law ensures the execution into the internal legal order of the 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, hereinafter referred to as Regulation (EEC) No 2919/85.

Article 2

Competent entity

The Directorate-General for Natural Resources, Security and Maritime Services (DGRM) is the competent entity for issuing certificates proving that the vessel belongs to the navigation of the Rhine, under the terms and for the purposes of articles 2 and 5 of the Regulation Implementing the provisions of the third paragraph of article 2 of the Revised Convention for the navigation of the Rhine, hereinafter referred to as the Implementing Regulation, and of paragraphs 1 and 3 of the Protocol of Signature of Additional Protocol 2 to the said Convention of 17 October 1979.

Article 3

Issuance Request

- 1- The issuance of certificates proving that the vessel belongs to the Rhine navigation depends on the submission to DGRM of a specific request, by the owner or co-owners of the vessel or by the operator of the vessel, who meets the conditions referred to in articles 3 to 5 of the Implementing Regulation.
- 2- The request referred to in the previous number is presented and processed at the Electronic Balcony of the Sea (BMar), accessible through the ePortugal portal, wherewith all information and documents deemed necessary shall be provided and submitted, under the terms of paragraph 1 of article 6 of the Implementing Regulation.
- 3- The DGRM is responsible for evaluating the request, namely for the purpose of assessing the compliance with the conditions to which its presentation is subject, pursuant to articles 3 to 5 of the Implementing Regulation.
- 4- The DGRM informs the interested party of the result of the evaluation carried out, within 10 days from the date the request is submitted, and may request additional information whenever deemed necessary, pursuant to the provisions of paragraph 1 of article 6 of the Implementing Regulation.
- 5- The period for decision referred to in the previous number is suspended until the interested party submits the requested information.
- 6- The issuance of the certificates referred to in this article depends on the proof by the applicant that the vessel is certified under Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels.
- 7- Safety certification of vessels covered by this decree-law may be carried out by a competent authority of any Member State, under Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016.

- 8- The certificates referred to in this article are issued in digital format, according to the models approved by the Central Commission for the Navigation of the Rhine (CCR), but may also be issued in physical format upon request of the interested party and shall contain, in particular, the information referred to in paragraph 1 of article 7 of the Implementing Regulation.
- 9- For submission of the application secure authentication mechanisms must be used, including those of the Citizen Card and Digital Mobile Key, with the possibility of using the Certification System of Professional Attributes, as well as the electronic identification means issued in other Member States recognized for this purpose under article 6 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014.

Article 4

Rendering of information

The owner or co-owners of the vessel or the operator of the vessel, as applicable, shall inform DGRM, through BMar and within a maximum period of 10 days, of the occurrence of any changes to the conditions that justified the issuance of the certificates provided for in this decree-law.

Article 5

Fees

- 1- For the issuance of the certificates provided for in this decree-law, the fee referred to in paragraph 1.2. of item II.C of the fee table provided in annex I of the Ordinance no. 342/2015 of 12 October, in its current wording, shall apply.
- 2- To the extent necessary, the provisions of Ordinance no. 342/2015 of 12 October, in its current writing, shall apply.

Article 6

Supervision

Without prejudice to the supervision powers attributed to other national and foreign entities, DGRM shall ensure the inspection of compliance with the provisions provided for in this decree-law, including the confirmation, at any time, of the maintenance of the conditions that justified the issuance of the documents evidencing that the vessel belongs to the navigation of the Rhine, under the terms of paragraph 3 of article 6 of the Implementing Regulation.

Article 7

Administrative offenses

- 1- Breach of the obligation to provide information on changes to the conditions that justified the issuance of the certificates provided for in this decree-law constitutes an administrative offense punishable by a fine of a minimum amount of €1,500 and a maximum of €3,740 when applicable to natural persons.
- 2- The maximum amount of the fine referred to in the preceding paragraph is increased to € 44 850 when applicable to legal persons.

- 3- Negligence is punishable, in which case the maximum amounts of the fines are reduced to half.

Article 8

Proceedings and application of sanctions

- 1- The DGRM is responsible for the instruction of the administrative offense proceedings set forth under this decree-law, as well as on the determination of the corresponding fines.
- 2- Without prejudice to the application of other additional sanctions provided for in the illicit administrative offense regime approved by Decree-Law no. 433/82 of 27 October, in its current wording, the DGRM may, together with the imposition of a fine, determine the withdrawal of the certificates foreseen in the present decree-law, pursuant to the provisions of paragraph 3 of article 6 of the Implementing Regulation.
- 3- To the extent necessary, the provisions of Decree-Law no. 433/82 of 27 October, in its current wording, shall apply.

Article 9

Destination of fines

The amount of the fines collected within the implementation of this decree-law reverts to:

- a) 10% for the serving entity;
- b) 10% for the Blue Fund;
- c) 20% for the entity that ensures the instruction and application of the fine; and
- d) 60% to the State.

Article 10

Duty of information

- 1- DGRM shall ensure, simultaneously, the reporting to the European Commission and to the CCR of the information referred to in paragraph 4 of article 2 and paragraph 1 of article 8 of the Implementing Regulation, pursuant to paragraph 1 of article 2 of the Regulation.
- 2- DGRM shall also communicate, simultaneously, to the European Commission a copy of the process regarding the request for consultation made to the CCR, pursuant to paragraph 2 of article 2 of the Regulation (EEC) No 2919/85.
- 3- The publication, dissemination and distribution, for consultation or otherwise, of information, documents and other content that, by their nature and under the terms of this decree-law, can or should be made available to the public, without prejudice to the simultaneous use of other means, must be available in open formats, which are machine-readable, to be placed or indexed in the Public Administration Open Data Portal, at www.dados.gov.pt.

Article 11

Autonomous Regions

This decree-law applies to the Autonomous Regions.

Article 12

Entry into force

This decree-law enters into force on the day following its publication.

Seen and approved by the Council of Ministers of May 13, 2021. — António Luís Santos da Costa — Augusto Ernesto Santos Silva — Alexandra Ludomila Ribeiro Fernandes Leitão — Teresa Alexandra Meca Valverde Gouveia Coelho Estêvão Pedro.

Enacted on May 24, 2021.

Publish it.

The President of the Republic, MARCELO REBELO DE SOUSA.

Countersigned on May 28, 2021.

The Prime Minister, António Luís Santos da Costa.