

**Fédération  
Belgische  
Binnenvaart**



**Fédération  
Batellerie  
Belge**

**FEDERATIE BELGISCHE BINNENVAART v.z.w. - FEDERATION BATELLERIE BELGE a.s.b.l.**  
**p/a Houtdok 25 A 2030 Antwerpen**

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## ***Legal note - annex general document on EBIS***

As explained in the general document on EBIS, in brief EBIS includes a questionnaire, that must be filled in by the carrier, and yearly inspections of the vessel, resulting in a survey report, that is available to all EBIS members. Based on this survey report every EBIS member decides whether or not a vessel is fit to be used by this Member.

With the application of the EBIS system, some legal issues may be involved.

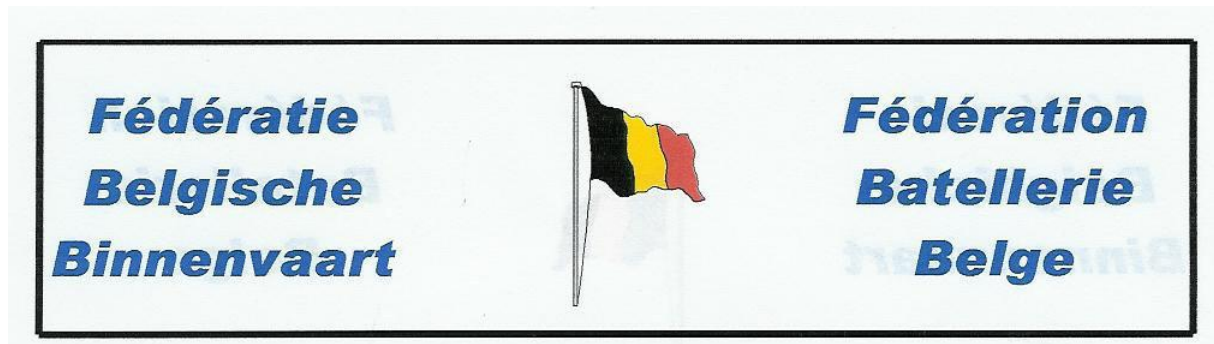
Rules in respect of the technical requirements for vessels and qualifications of the crew, are already established by provisions of Union law, in particular:

- Council Directive 87/540 of 9 November 1987 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation, *O.J.*, L 322/20 of 12 November 1987.
- Council Directive 91/672/EEC of 16 December 1991 on the reciprocal recognition of national boatmasters' certificates for the carriage of goods and passengers by inland waterway, *O.J.*, L 373 of 31 December 1991
- Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC, *O.J.*, L 389 of 30 December 2006;
- Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, *O.J.*, L 260 of 30 September 2008;

or established by the CCNR, such as the Rhine Vessels Inspection Regulations.

All carriers that comply with Union regulations, and in the Rhine market with the Rhine regulations, have free access to international and national inland waterway transport, freedom ensured by:

- 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, *O.J.*, L 280 of 22 October 1985
- Council Regulation (EEC) No 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State, *O.J.*, L 373 of 31 December 1991;



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- Council Regulation (EC) No 1356/96 of 8 July 1996 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services, *O.J.*, L 175 of 13 July 1996;

By imposing yearly inspections and additional requirements that go beyond the provisions laid down under Union or international law with regard to vessels and crew, inland carriers that are entirely in conformity with all applying EU regulations and therefore have free access to the IWT market, can nevertheless be excluded from or restricted in performing transport services.

Carriers have no say in the EBIS issues nor on the inspections – they can there remarks, but nothing more than that. The issues and inspections are imposed unilaterally by the majors, in general not being a contract party under a transport contract, and seem to be not negotiable. I.e. without acceptance of the inspections and the questionnaire, no transports can be done.

More, by the evaluation system, based on events unilaterally considered by majors to be incidents, carriers can be even excluded without any say, simply by a decision of a major, from the further performance of transport services and even from the possibility of concluding transport contracts.

However, according to art. 2 of the Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community (*O.J.*, L 304, 27 November 1996) must be concluded freely.

Finally, barge-operators apparently seem to have the duty to inform majors of all incidents or nearly incidents, and therefore to reveal information that possibly can be considered to be private, and can be used by the EBIS Member to simply exclude carriers from transport services, although they fully confirm with all applying regulations.

By all of this, it cannot be excluded that by doing so majors, using their market position, divide, regulate and restrict the functioning of the IWT market. They impose inspections beyond the inspections according to Directive 2006/87/EC, intervene in contracts, etc.