

River Cabotage and Economic Sovereignty on the Danube: European Regulation and the Protection of National Interest

Professor Florin TUDOR¹

Abstract

The study investigates river cabotage on inland waterways from the perspective of the interaction among European law, fiscal policy, and the strategic interests of each Member State. The analysis starts with Regulation (EC) No. 1356/96 on transport between Member States and explores the interpretation of the notion of "transport of a temporary nature". The economic and fiscal implications of cabotage activities undertaken by EU and non-EU operators, as well as the implications for competitiveness and competitive imbalances, are highlighted. The study also assesses the internal legislative gaps and the impact on Romanian operators, proposing a regulatory reform that would clearly define the notion of temporary activity and establish a balanced mechanism between the freedom to provide services and the protection of the internal market. The conclusion supports the need for a coherent policy to protect the Romanian fleet, compatible with EU law and anchored in national economic and strategic objectives.

Keywords: river cabotage, sovereignty, competitiveness, European law, taxation.

JEL Classification: K22, K33, F15, H25

1. Introduction

Freedom of navigation on inland waterways that cross several states has been enshrined since 1815, through the Final Act of Vienna, which established the principles according to which *"the perfect equality of all riparian states in the use of the entire course of rivers and streams and the exclusion of any preferential treatment"*. These provisions, which we can consider the first manifestations of European public law, did not clarify whether this freedom of navigation for riparian's applies only to European/international transport or also to national transport, i.e., cabotage.

The current general regulatory framework for the transport of goods or passengers by inland waterways between Member States, as well as within a Member State, with a view to establishing the freedom to provide these transport services, is found mainly in the content of Council Regulation No. 1356 of 8 July 1996, and Regulation No. 3921 of 16 December 1991. These two rules establish free access for vessels from Member States to inland waterway transport, but the clarification of the 1815 controversy regarding cabotage remains relevant. Moreover, for non-EU carriers, there are no specific clarifications regarding cabotage. The applicable regulatory framework, in this latter case, is the Belgrade Convention of 1948, which guarantees freedom of navigation on the Danube for the signatory states, namely: the former Union of Soviet Socialist Republics, the former Federal Republic of Yugoslavia, the former Czechoslovak Republic, Bulgaria, Hungary, Ukraine and Romania².

¹ Florin Tudor - Faculty of Law and Administrative Sciences, "Dunărea de Jos" University of Galați, Romania, florin.tudor@ugal.ro. ORCID No.: 0009-0009-7588-4588.

² For a comparative view see internationally Rutgerd Boelens, Arturo Escobar, Karen Bakker, Lena

Given that the principle of free navigation has been interpreted to facilitate the transport of goods on international waters, but also to support the economic objectives of the riparian states³, the provisions above contain minimum norms that do not affect the sovereign right of states to establish their own rules, without affecting the elements of extraneousness. Over time, there have been conflicts, some of which have been resolved by European and international courts. In other cases, in relation to the presence of inland waterways under the jurisdiction of states or of mixed waterways, such as: Danube, Main, Rhine, Meuse, after careful examination, some states have adopted texts in their domestic law.

The primary research method used is documentary analysis, through which a series of international conventions, European and domestic legal provisions, relevant studies, and specialised literature were examined and interpreted. To improve understanding, we also employed a comparative method to examine international commercial law relations, particularly the transport of river goods, and the applicable notions of private international law in selected EU member states. A challenge of this research is clarifying certain legal norms, motivated by the lack of specialised studies or analyses regarding the problem from the practitioner's perspective, the diverse casuistry, and the possible consequences that may seriously affect the commercial interests of some EU river carriers.

2. Brief theoretical considerations

At European level, *"the uniform regime for market access also implies the introduction of freedom to provide services by eliminating all restrictions imposed on the service provider on grounds of nationality or on grounds of being registered in a Member State other than that in which the service is to be provided"* is stated in the text of Article 2 of Council Regulation No. 1356 of 8 July 1996 on common rules applicable to the carriage of goods or passengers by inland waterways between Member States with a view to establishing freedom to provide such transport services: *"Any operator carrying goods or passengers by inland waterways may carry out the transport operations referred to in Article 1 above without discrimination on grounds of nationality or place of registration, provided that he:*

- *is registered in a Member State in accordance with the legislation of that Member State;*
- *has the right in that Member State to carry out international carriage of goods*

Hommes, Erik Swyngedouw, Barbara Hogenboom, Edward H. Huijbens, et al. "Riverhood: Political Ecologies of Socionature Commoning and Translocal Struggles for Water Justice." *The Journal of Peasant Studies* 50 (3), 2023: 1125–56. doi:10.1080/03066150.2022.2120810.

³ Systematic and updated analysis of the European legal framework for inland waterway transport, see, Massimiliano Grimaldi, *Inland Waterway Transport. The European Legal Framework*, Taylor & Francis, 2023, ISBN: 9781000833089, 1000833089 pp. 280 ff.; See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions towards quality inland waterway transport NAIADES II. The objective of NAIADES II is to create the necessary conditions for inland waterway transport to become a good quality mode of transport: well managed, efficient, safe, integrated into the intermodal chain, with good quality jobs, occupied by qualified workers, and respecting high environmental standards. Link accessed on 12.12.2025: <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52013DC0623>.

or passengers by inland waterways;

- uses for these transport operations, river vessels which are registered in a Member State or, in the absence of such registration, hold a certificate of membership of the fleet of a Member State."

The concept of cabotage is defined in the text of art. 1 of Council Regulation No. 3921 of 16 December 1991 laying down the conditions under which non-resident carriers may carry goods or passengers by inland waterway within a Member State, according to which: *"Any transported A freight or passenger transport operator by inland waterway is permitted to carry out, in a Member State in which he is not established, national freight or passenger transport operations by inland waterway for the account of a third party, hereinafter referred to as "cabotage", provided that:*

- *he is established in a Member State in accordance with its legislation and, where applicable,*

- *he is entitled to carry out international freight or passenger transport operations by inland waterway.*

If he meets these conditions, he may temporarily engage in cabotage activities in the Member State concerned without having to establish a registered office or other establishment there".

From the economic analysis of these two texts, it follows that, if temporary, unrestricted access of vessels from the Member States to inland waterway transport, including cabotage, is established. The two texts also indicate that, without affecting the prevalence of European law over national rules, Member States may regulate the conditions of cabotage⁴, according to art.3 of Regulation no. 3921/1991, about *"tariffs and conditions governing transport contracts and chartering and operating procedures, technical specifications for vessels, navigation and police regulations, navigation time and rest periods, value added tax relating to transport services"*.

Therefore, the notion of cabotage is regulated by operators from other Member States, by way of exception and by authorisation, under conditions in which the transport is temporary.

3. Interpretation of the temporary nature of inland waterway transport

As previously shown, Regulation (EC) No. 1356/96 and Regulation (EEC) No. 3921/91 establish free access for vessels from Member States to inland waterway transport, including cabotage, if it is of a temporary nature.

The constant case-law of the EU has stated that *"temporary character depends on duration, frequency, periodicity and continuity, cabotage being permitted as long as it does not become a stable and continuous activity in the host State"*⁵. In other words,

⁴ "... Member States may adopt rules for the implementation of a regulation if they do not thereby prevent the direct applicability of the regulation, do not disguise the Community nature of the rules and specify that a discretionary power granted by the regulation is exercised, while remaining within the limits of its provisions", see Judgment of the CJEU of 14 October 2004, Commission v Netherlands, C-113/02, ECR, p. I-9707, paragraph 16 - link accessed on 12.12.2025: https://curia.europa.eu/juris/document/document_print.jsf?doclang=RO&text=&pageIndex=0&part=1&mode=lst&docid=117185&occ=first&dir=&cid=13909.

⁵ See: CJEU Gebhard Judgment (C-55/94). Link accessed on 12.12.2025: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61994CJ0055>; CJEU Analir Judgment (C-205/99), link accessed on 12.12.

temporary means an occasional activity, dependent on demand, lacking a permanent character. Therefore, if a foreign operator carries out regular and continuous transport between ports in a State, this goes beyond "temporary" and becomes "continuity", which would require the registration of a branch/representative office in that State.

The difficulty lies in the fact that "temporary" cannot be assessed objectively, as it does not necessarily refer to a single voyage, and the regulations impose no numerical limit. Hence, the complexity of the case law, since *"Member States may adopt measures to implement a regulation if they do not thereby impede the direct applicability of the regulation, do not disguise its nature as an act of Union law and specify the exercise of the margin of appreciation granted by the regulation, while remaining within the limits of its provisions"*⁶.

The situation is different if cabotage is carried out as part of international transport; in that case, such activity must no longer be temporary but must be directly related to international transport. The Belgrade Convention of 1948 guarantees freedom of navigation on the Danube for the signatory states, but this operation can be qualified as transit and access to ports, but does not oblige the Member State to allow cabotage on internal relations⁷.

There are thus several risks associated with non-EU cabotage, primarily unfair competition with European operators and tax consequences, as well as the risk of social dumping, poorly paid crews, and more permissive technical standards, against the backdrop of an increase in river transport activities, including cabotage⁸.

4. Recommended regulatory framework. The case of Romania

In this context, it becomes necessary to clarify the legislative and administrative margin of maneuver available to a Member State to protect national economic and fiscal interests, while respecting European and international obligations.

The EU legislative framework established by the two regulations is directly applicable and cannot be limited by national law. No Member State can unilaterally introduce restrictions for EU operators, otherwise it would violate primary Union law (freedom to provide services, art. 56 TFEU - ex-art. 49 TEC). It would, on a case-by-case basis, trigger an infringement procedure by the European Commission.

Some member states have attempted to legislate restricting access to river cabotage for non-national vessels, but the CJEU has rejected these measures, contrary to European law⁹. The only exceptions allowed in the EU are for reasons of national

2025: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61994CJ0055>.

⁶ See Judgment of the CJEU of 30 March 2017, Lingurár, C-315/16, EU:C:2017:244, paragraphs 17 and 18, link accessed on 12.12.2025: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62016CJ0315_SUM.

⁷ Nataša Tomić-Petrović, Zoran Radmilović, and Radoslav Rajković. "Environmental Status of the Danube Commercial Navigation: Serbia and the Danube Border Countries." *Journal of Marine Engineering & Technology* 22 (3), 2023: 123–30. doi:10.1080/20464177.2022.2137905.

⁸ Gabor-Giovani Luca, Daniela-Ioana Guju, Laura Comănescu, „The Development of Inland Waterway Transport as a Key to Ensuring Sustainability: A Geographic Overview of the Bucharest–Danube Canal”, *Sustainability* 2025, 17(10), 4438; <https://doi.org/10.3390/su17104438>.

⁹ Judgment of 25 October 2012, Ketelä, C-592/11, EU:C:2012:673, paragraphs 36 and 63 with reference to Judgment of 15 May 2014, Szatmári Malom, C-135/13, EU:C:2014:327, paragraph 55, and Judgment of 7

security or force majeure. Major, and only temporary.

In its current form, European legislation is undoubtedly incomplete. In the absence of precise specifications, adopted either by unifying the norms at the European level, or by adopting legislative clarifications at the national level, there is a risk of permanent cabotage activities by non-residents without limitations or administrative constraints. It is imperative to adopt explicit provisions regarding the definition and scope of the notion of temporary and the identification of specific mechanisms for prior authorization. Otherwise, the authorities cannot take any measures to prohibit such activities.

Currently, Romanian legislation does not separately regulate river cabotage, creating a regulatory vacuum that adversely affects the state's economic and fiscal interests. According to art. Under Article 1251 of the O.G. No. 42/1997 on maritime transport and inland waterways, cabotage is also permitted for an operator from another Member State. This permission is granted only to the extent that the cabotage activity is carried out temporarily: *"(1) In the national navigable waters of Romania, the following activities are carried out using only vessels flying the Romanian flag:*

a) maneuvering the towage of maritime vessels in ports;

b) transport of pilots who ensure pilotage at the entrance and exit of ports, inside them and on inland waterways.

c) cabotage, respectively, the transport of goods and passengers, carried out between two or more ports located on the inland waterways of Romania.

(2) The Ministry may authorize the activities provided for in paragraph (1) to be carried out also with the use of vessels flying the flag of other states.

(3) The activities provided for in paragraph (1) may also be carried out with vessels flying the flag of other states, if in the agreements, in the international conventions to which Romania is a party or European Union legislation provides for this".

Romania is clearly obliged to apply Regulation 1356/96 in its letter and spirit, but also has the sovereign right to protect the balance of the internal market. The notion of temporary must be interpreted restrictively, so that cabotage remains a specific exception rather than a routine economic activity for non-resident operators. In the absence of clear criteria, Romanian operators suffer significant competitive harm, contrary to the spirit of European regulations¹⁰.

Romania, as a Member State of the European Union and a riparian state of the Danube, guarantees free access to inland waterway transport, including cabotage, for vessels of Member States, provided that such access is temporary. The case law of the Court of Justice of the European Union (Gebhard, Analir) clarifies that the temporary

July 2016, Občina Gorje, C-111/15, EU:C:2016:532, paragraph 35, link accessed on 12.12.2025: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=128903&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=5488151>.

¹⁰ Göktuğ İpek. "The Black Sea-Danube Road as a New Foreign Trade Route Between Turkey and Central Europe (1935–1939)." *Journal of Balkan and Near Eastern Studies* 27 (6) 2025: 855–72. doi: 10.1080/19448953.2025.2481808. About gaps in regulation and the establishment of higher security criteria, as an extended aspect for Romania, see Cristina Elena Popa Tache. "Frontierele de reglementare ale Mării Negre prin cartografia dreptului Uniunii Europene și a dreptului internațional / The Regulatory Frontiers of the Black Sea through the Mapping of European Union Law and International Law – Case Study: Romania's Maritime Security Strategy." *Universul Juridic* no. 12 (2024): 75–114.

nature of an operation is assessed by its duration, frequency, periodicity, and continuity. At the same time, Romania has international obligations as a riparian state, based on: the 1948 Belgrade Convention on Navigation on the Danube, which ensures freedom of navigation for riparian states; other relevant international conventions (IMO, SOLAS, MARPOL); the Trans-European Transport Network (TEN-T), which requires the functionality of international corridors, without affecting Romania's right to regulate internal cabotage, but in a manner that does not contravene the principles of European law or international norms.

Therefore, in the absence of clear internal rules, the implementation of the notion of "temporary" is uneven even within the Romanian Naval Authority and the Ministry of Transport, which lack transparent and operational monitoring tools. Currently, foreign operators in the EU can conduct repeated transports between Romanian ports, thereby classifying them as occasional.

To ensure a balance between the European freedom to provide services and the protection of the internal market, there is a need for regulation to define the "temporary" nature of river cabotage clearly; establishing objective and limiting criteria; monitoring operations through an electronic register and, finally, annual consultation of operators and professional associations.

We believe that road-maritime practices adopted by European legislators can inspire the definition of the temporary nature of EU cabotage. As for cabotage for non-resident operators, it may be permitted only by special authorisation, conditional on the existence of an international agreement, the inability of the Romanian and EU fleets to meet demand, and the temporary and occasional nature. This ensures compliance with EU and international law, the principle of proportionality, the freedom to provide services for EU operators, the provisions of the Belgrade Convention, and the principle of free transit for non-EU fleets.

5. Conclusions

Adoption of a draft regulatory act, in the form established by the legislator, is necessary to ensure a clear, coherent, and compliant legislative framework that aligns with European and international law, thereby enabling Romania to protect its economic and fiscal interests without affecting its obligations as a member state of the European Union.

In the case of Romania, we recommend the adoption of a government ordinance to define "temporary", EU limits, non-EU authorisations and general binding provisions, as well as a government decision for practical application – procedures, forms, electronic register, and monitoring methodology.

The temporary nature must be assessed based on the duration, frequency, periodicity, and continuity of transport operations, in accordance with the case law of the Court of Justice of the European Union. There must also be provisions limiting river cabotage operations, for example, to a maximum of three transports in a period of seven consecutive days from the completion of an international transport to Romania. In the absence of prior international transport, a foreign operator may conduct up to five river cabotage operations in a calendar month. Exceeding the limits set out above may require the operator to establish a branch or subsidiary in Romania under national law to conduct

regular maritime transport activities¹¹.

Finally, according to the principle of equal treatment, in the circumstances in which economic operators, river carriers, carry out the same activity, they should be subject, in theory and in practice, to the same rules and not benefit from a more favourable regime, including a more favourable tax regime. Tax law rules impose specific obligations on non-resident operators, namely registration as a payer of corporate tax and VAT and payment of the related duties in the host state, because their activity is constant and limited to inland waterway transport operations in Romania.

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¹¹ See, in this regard, Council Regulation 1072/2009 on common rules for access to the international road haulage market: "allowing non-resident road hauliers to carry out cabotage operations involving an unlimited number of loading and unloading points could render the three-transport limit provided for in Article 8(2) of Regulation No. 1072/2009 inoperative and, in this way, could contravene the temporary nature of cabotage" Link accessed on 12.12.2025: <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32009R1072>. Also, in accordance with the provisions of art. 8 of Council Regulation no. 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) "without prejudice to the provisions of the Treaty relating to the right of establishment and to the provisions of this Regulation, a person providing a maritime transport service may, for this purpose, exercise his activity temporarily in the Member States in which the service is provided, under the same conditions as those imposed by that State on its own nationals." Link accessed on 12.12.2025: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:31992R3577>.

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