



Brussels, 21.10.2022
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2022/0330 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union
in the Regional Steering Committee of the Transport Community as regards certain
changes to administrative and staff rules and the introduction of an education allowance
and rules on secondment and locally contracted experts**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the Regional Steering Committee set up under the Treaty establishing the Transport Community ('the TCT') with regard to three envisaged decisions by that Committee, namely a decision amending its Decision N° 2019/3 as regarding certain administrative and staff rules and the introduction in the Staff Regulations of the Transport Community of rules on teleworking and on education allowance, a decision on the rules on education allowance for the Transport Community Permanent Secretariat, and a decision on the rules on secondment and locally contracted experts.

2. CONTEXT OF THE PROPOSAL

2.1 The Treaty establishing the Transport Community

On 1 May 2019, the Republic of Albania, Bosnia and Herzegovina, the Republic of North Macedonia, Kosovo* (hereinafter referred to as Kosovo), Montenegro and the Republic of Serbia had ratified the TCT. The European Union is a party to the TCT and it adopted on 4 March 2019 a Council Decision on the conclusion of the Treaty establishing the Transport Community,¹ which entered into force on 1 May 2019.

2.2 The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the TCT to be responsible for the administration of the TCT and to ensure its proper implementation. For this purpose, it shall make recommendations and take decisions in the cases provided for in the TCT. Notably, the Regional Steering Committee:

- (a) prepares the work of the Ministerial Council,
- (b) decides on the establishment of technical committees,
- (c) makes recommendations and takes decisions in accordance with the TCT,
- (d) as regards newly adopted EU acts, takes appropriate action, notably through the revision of Annex I to the TCT,
- (e) appoints the Director of the Permanent Secretariat after consulting the Ministerial Council,
- (f) may appoint one or more Deputy Directors of the Permanent Secretariat,
- (g) lays down rules of the Permanent Secretariat,
- (h) may review, by way of a decision, the level of budget contributions,

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

¹ Council Decision (EU) 2019/392 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Treaty establishing the Transport Community, OJ L 71, 13.3.2019, p. 1–4

- (i) adopts the annual budget of the TCT,
- (j) adopts a decision specifying the procedure for the implementation of the budget, for presenting and auditing accounts and for inspection,
- (k) takes decisions on disputes brought by the Contracting Parties,
- (l) adopts general principles in the area of access to documents, in respect of documents held by bodies established by, or under, the TCT,
- (m) adopts annual reports to the attention of the Ministerial Council on the implementation of the Comprehensive Network;
- (n) in respect of certain Union acts, establishes time limits and ways for the transposition by the South East European Parties.

The Regional Steering Committee consists of one representative and one alternate representative of each Contracting Party. Participation as observer shall be open to all EU Member States. The Regional Steering Committee acts by unanimity.

2.3 Budget and Financial Rules

The contribution to the budget of the Transport Community is set out in Annex V to the TCT. The share of the Union amounts to 80% of the budget, while the remaining 20% shall be provided by the Western Balkans parties.

On 29 July 2020, the Regional Steering Committee of the Transport Community adopted the financial rules and auditing procedures applicable to the Transport Community.

The financial rules enable the Director of the Permanent Secretariat to implement the budget of the Transport Community in accordance with Article 36 of the TCT.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The adoption of the envisaged decisions by the Regional Steering Committee is necessary for the implementation of the TCT and the proper functioning of the Permanent Secretariat. As the Union is a party to the TCT, it is necessary to establish a Union position on the decisions.

In this respect, it shall be recalled that the TCT is one element liable to strengthen regional cooperation within the Western Balkans, as further explained in the Commission's proposal for a Council decision on the signing of the TCT [COM(2017)324 final, sub "General Context"].

4. LEGAL BASIS

4.1 Procedural legal basis

4.1.1 Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for Council decisions establishing "*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*".

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’².

4.1.2 Application to the present case

The Regional Steering Committee is a body set up by an agreement, namely the TCT.

The acts which the Regional Steering Committee is called upon to adopt include acts having legal effects. In accordance with article 30 of the TCT the Regional Steering Committee is empowered to lay down rules of the Permanent Secretariat, in particular for the recruitment, working conditions and geographic equilibrium of the Secretariat’s staff. By their nature, and as a matter of international law governing the Regional Steering Committee, those rules contain elements that must be considered as having legal effects.

The envisaged acts do not supplement or amend the institutional framework of the TCT.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2 Substantive legal basis

4.2.1 Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union’s behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2 Application to the present case

The envisaged acts are necessary for the proper functioning of the TCT. In turn, the TCT pursues objectives and has components in the areas of road, rail and inland waterways transport, which are modes covered by Article 91 TFEU as well as in the area of sea transport, a mode covered by Article 100(2) TFEU. Because of their horizontal nature, the envisaged acts pertain to all these elements.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 91 and 100(2) TFEU.

4.3 Conclusion

The legal basis of the proposed decision should be Articles 91 and 100(2) TFEU, in conjunction with Article 218(9) TFEU.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 and Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Treaty establishing the Transport Community ('the TCT') was signed by the Union in accordance with Council Decision (EU) 2017/1937³.
- (2) The TCT has been approved on behalf of the Union on 4 March 2019⁴ and entered into force on 1 May 2019.
- (3) The Regional Steering Committee was established by the TCT for the administration and the proper implementation of the TCT.
- (4) The Regional Steering Committee is envisaged to adopt decisions on amendments to its Decision N° 2019/3, on rules on education allowance for the Transport Community Permanent Secretariat and on rules on secondment and locally contracted experts, respectively.
- (5) As such, decisions are necessary for the good functioning of the Permanent Secretariat of the Transport Community. It is appropriate to establish the position to be taken on behalf of the Union in the Regional Steering Committee with regard to their adoption.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Regional Steering Committee of the Transport Community regarding the decisions amending Decision N° 2019/3 on rules on education allowance for the Transport Community Permanent Secretariat and rules on secondment and locally contracted experts, respectively, shall be based on the draft decisions of the Regional Steering Committee attached to this Decision.

³ Council Decision (EU) 2017/1937 of 11 July 2017 on the signing, on behalf of the European Union, and provisional application of the Treaty establishing the Transport Community, OJ L 278, 27.10.2017, p. 1.

⁴ Council Decision (EU) 2019/392 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Treaty establishing the Transport Community, OJ L 71, 13.3.2019, p. 1–4.

Minor changes to the draft decisions may be agreed to by the representatives of the Union in the Regional Steering Committee without further decision by the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*