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COWEB 151
ALB 7
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ELARG 55

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Subject: **Preparation for the Council meeting (Transport, Telecommunications and Energy) on 12 and 13 June 2008**

External relations: Transport Treaty for the Western Balkans:

Draft Decision by the Council authorising the Commission to open negotiations on behalf of the European Community with Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council, on a treaty establishing a Transport Community

- Adoption

Delegations will find attached the partially declassified version of the above-mentioned document.



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THE EUROPEAN UNION**

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RESTREINT UE

**TRANS 177
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REPORT

from : Council General Secretariat
to : COREPER

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Introduction

1. On 12 March 2008, the Commission submitted its Recommendation for a mandate to negotiate a treaty establishing a Transport Community with the Western Balkans to the Council (7559/08 RESTREINT). This Transport Community Treaty is part of the strategy for enhancing the European prospects of the countries in the Western Balkan.

At first, the treaty should promote co-operation in the field of transport between the states within the region. Eventually, it should result in:

- a common legislative regime for transport in the Union and the Western Balkans based on the rules currently in force and being developed in the EU;
- integration of infrastructure, inter alia through improvement of cross-border passage points;
- facilitation of investments.

State of Play

2. The issue of the Transport Community with the Western Balkans was examined, as a lunch item, at the TTE Council on 7 April 2008.

3. The Working Party on Transport, Intermodal Questions and Networks examined the Commission Recommendation and the ensuing draft Council Decision with annexed negotiating directives at several of its meetings.

4. The Working Party on the Western Balkans (COWEB) examined the draft Council decision at its meetings of 19 and 22 May 2008 preparing the discussion in Coreper II on 28-30 May 2008.

Main issues

5. The Working Party on Transport, Intermodal Questions and Networks focussed its discussion on two main issues: the mandate allowing the Commission to start negotiations on road transport issues and the institutional provisions of the Transport Community Treaty. The working party succeeded in solving all issues except the paragraph on institutional provisions where HU and BG suggest alternative text. Furthermore, DK holds a parliamentary scrutiny reservation on the draft Council Decision.

6. COWEB and Coreper II undertook the examination of the draft mandate which resulted in the reference "Kosovo, under Resolution 1244(1999) of the United Nations Security Council".

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Institutional provisions (Page 14, footnote 5)

8. The draft mandate for the Transport Community Treaty with the Western Balkans provides for the establishment of several bodies constituting the institutional framework of the treaty. The Working Party on Transport, Intermodal Questions and Networks discussed how Member States will participate in this institutional framework considering that the Transport Community Treaty with the Western Balkans is expected to fall entirely within Community competence. With a view to respecting the distribution of Community and national competences, whilst at the same time ensuring appropriate involvement of Member States, the current text of the draft mandate indicates that participation as an observer in the bodies of the institutional framework shall be open to all interested EU Member States. In this context, it is noted that specification of the institutional provisions can be done at a later stage in the negotiations.

9. In footnote 5, the HU and BG delegations suggest stipulating that participation in the institutional framework shall be open to all EU Member States, thereby explicitly mentioning several Member States by name. Both delegations make this suggestion referring to a similar text in the mandate for establishing an Integrated Energy Market Organisation in South East Europe (7554/04 RESTREINT).

Other important issues

10. Other important changes to the Recommendation of the Commission agreed by the Working Party on Transport, Intermodal Questions and Networks are the following:

- a further specification of the negotiating objectives. In the mandate it is made clear that the Transport Community should contribute to develop a safe, efficient and sustainable transport. Fair competition within a mode and between the modes of transport should be ensured by full implementation and practical application of all relevant parts of the acquis.
- further detailing the mandate of the Commission as regards infrastructure: the relevant rules in the treaty should provide for further development of the South East Europe Core Transport Network, according to the Community Guidelines on the Development of the Trans-European Transport Network (TEN-T); and taking into account the related bilateral and multilateral agreements concluded by Member States; including the development of key links and interconnections needed to eliminate bottlenecks and to promote the interconnection of national networks.

Kosovo, under Resolution 1244(1999) of the United Nations Security Council

11. COWEB and Coreper II conducted the discussion which resulted in the reference "Kosovo, under Resolution 1244(1999) of the United Nations Security Council". At its meeting on 28-30 May 2008, Coreper II succeeded in agreeing on using the above mentioned reference in the text of the draft mandate. Nevertheless, without prejudice to the agreement reached on the text of the draft mandate in Coreper II, CY, EL, ES, RO and SK announced to make statements to the Council minutes.

Conclusion

12. Coreper is therefore invited to examine the two outstanding issues on the suggestion for alternative text for the institutional provisions of HU and BG and the parliamentary scrutiny reservation of DK with a view to preparing the Council Decision on a negotiating mandate for the Commission to establish a Transport Community Treaty by the TTE Council on 12 and 13 June 2008.

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COUNCIL DECISION

to authorise the Commission to open negotiations on behalf of the European Community with Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council, on a treaty establishing a Transport Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular article 300, paragraph 1 thereof,

Having regard to the Recommendation of the Commission¹,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission is hereby authorised to open negotiations on behalf of the European Community with Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council, on a treaty establishing a Transport Community.

¹ Document 7559/08 RESTRICTED EU

Article 2

The Commission shall conduct these negotiations on behalf of the European Community in consultation with a special committee appointed by the Council to assist it in its task and shall keep the Council regularly informed on the progress of the negotiations.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

The Commission shall provide early and clear information to the European Parliament during the conduct and conclusion of the negotiations.

The agreement shall be concluded in all official languages of the European Union, each of these being equally authentic.

Article 3

The Commission shall conduct the negotiations in accordance with the appended negotiating directives (ANNEX I).

Done at Brussels, [...]

For the Council of the European Union,
The President

**NEGOTIATING DIRECTIVES FOR A TREATY ESTABLISHING A TRANSPORT
COMMUNITY BETWEEN THE EUROPEAN COMMUNITY AND ALBANIA, BOSNIA &
HERZEGOVINA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,
MONTENEGRO AND SERBIA AS WELL AS KOSOVO, UNDER RESOLUTION
1244(1999) OF THE UNITED NATIONS SECURITY COUNCIL**

1. Negotiating objectives

The agreement shall be based on, and shall not go beyond, the Community *acquis* on transport as regards infrastructure development, market opening, technical interoperability, safety, security, environment and social legislation. The Transport Community should contribute to develop a safe, efficient and sustainable transport. Fair competition within a mode and between the modes of transport should be ensured by full implementation and practical application of all relevant parts of the *acquis*.

2. Negotiating parties

The negotiating parties will be on one side the Commission on behalf of the European Community and on the other side Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council.

3. Scope of the Agreement

The obligation of the Treaty will be without prejudice to the obligations derived from existing multilateral agreements, including WTO agreements.

INFRASTRUCTURE

Based on the Memorandum of Understanding on the development of the South East Europe Core Regional Transport Network (MoU), the provisions on transport infrastructure in the treaty should include rules on:

- The reference network on which the provisions of the agreement will be applicable.
- The reference network in the framework of negotiation on the future TEN-T.
- Further development of the South East Europe Core Transport Network as defined in the MoU (see annex 1), according to the Community Guidelines on the Development of the Trans-European Transport Network (TEN-T)², and taking into account the related bilateral and multilateral agreements concluded by Member States; including the development of key links and interconnections needed to eliminate bottlenecks and to promote the interconnection of national networks.
- An information system to be used by decision makers in reviewing and monitoring the condition³ and performance of the South East Europe Core Regional Transport Network.
- A platform for efficient donor coordination and use of funds provided by public and private sources.
- The process to develop a 5-year rolling work plan for the development of the network and the identification of priority projects of regional interest, in line with best international practice, which would contribute to balanced sustainable development in terms of economic, environmental and social impacts.
- Taking into account where relevant the environmental *acquis* with regard to transport, in particular the Strategic Impact Assessment, Environmental Impact Assessment, nature-related and air quality-related directives.

² OJ L 167, 30.4.2004.

³ For 2006, the results of the condition analysis for roads are that 3% of corridors and 27% of routes are classified as poor or very poor. 46% of roads have been classified as being in good condition. In contrast, only 7% of the rail network is classified as being in good condition (and 28% in poor condition). Regarding waterways, with the exception of about 30 km of substandard depth, the Danube is mostly to EU standard depth of 2.5 m. The condition of 4 (out of 7) seaports is considered good.

- The continuation of the development of the approximation with the procurement *acquis* according to the existing Stabilisation and Association Process and/or Interim Agreement within the Enlargement or Stabilisation and Association Process.
- Development of efficient traffic management systems at regional level ensuring cost effectiveness and high quality.
- Efficient regional development of Air Traffic Management infrastructure in line with the Single European Sky and SESAR.

TRANSPORT MODES

Railway transport

The provisions on rail transport in the treaty should include rules on:

- Effective, independent and competent regulatory institutions, including, among others, regulatory body, licensing body, national safety authority.
- Separation of infrastructure management and provision of transport services.
- Independence of infrastructure management and of railway undertakings.
- Due compensation of public service obligations in rail passenger transport and rail infrastructure management.
- The objective of improving the financial situation of railways undertaking by reducing historic debts to a level which does not endanger the economic viability of infrastructure managers and railway undertakings succeeding to the incumbent state railways.
- On the basis of the Community *acquis* in railway legislation, stepwise opening of access to the market regarding the provision of transport services.
- Technical and operational harmonisation, including technical specifications on interoperability, and the cross-acceptance of rolling stock.
- Safety, in particular the conditions related to safety certificates for railway undertakings and train driver licenses.
- Social rules, in particular on the working conditions of mobile workers engaged in interoperable cross-border services.
- Transport of dangerous goods.

Road transport

The provisions on road transport in the treaty should include rules on:

- Access to the occupation and access to the market in road transport, based on good repute, financial standing and professional competence for undertakings with stable and effective establishment.
- **NOT DECLASSIFIED**
- Transparent charges for the use of road infrastructure, where such charges are levied.
- Driver licensing and driver training.
- Social rules, in particular driving time and rest periods for professional drivers, including the digital tachograph and working time rules.
- Technical requirements for road vehicles regarding weights and dimensions, roadworthiness testing and speed limitation devices.
- Transport of dangerous goods.
- Enforcement of rules related to driving time and rest periods, the use of the digital tachograph, roadworthiness testing and transport of dangerous goods by road, including roadside checks.
- Minimum annual heavy goods vehicle taxes and minimum excise duty.

Waterborne Transport

Motorways of the Sea and Short Sea Shipping

The provisions on Motorways of the Sea and Short Sea Shipping in the treaty should include rules on:

- Establishment of new links with EU countries.
- Enlargement of maritime linkages of Western Balkan countries with third countries in the South Mediterranean and Black Sea so that the Western Balkans region can better benefit from the key worldwide maritime routes.

Maritime Safety and Security

The provisions on maritime safety and security in the treaty should include rules on:

- Alignment of maritime safety policies.
- Promotion of and support for the implementation of relevant IMO⁴ Conventions and relevant resolutions of IMO's Maritime Safety Committee and Maritime Environment Protection Committee.
- Effective enhancement of ships and port facilities security in application of the IMO instruments in particular to SOLAS Convention Chapter XI-2 and the ISPS Code and in accordance with the EC standards.
- Effective enforcement of maritime safety measures in the areas of Port State Control and Flag State as applicable.

⁴ International Maritime Organisation.

Inland waterway transport

The provisions on inland waterway transport in the treaty should include rules to *complement* those established under the Conventions for navigation on the Danube and the Sava River, in the following areas:

- Stepwise opening of the access to the occupation and access to the market on inland waterway transport services, to complement the market rules established under the Belgrade Convention.
- Harmonisation of technical requirements and recognition of safety certificates, including boat master certificates, essential for the uninterrupted safety of navigation on the River Danube between EU Member States and third countries.
- Harmonised River Information Services (RIS) on all relevant waterways in the scope of application of the treaty.
- Social rules, in particular on the organisation of working time.
- Transport of dangerous goods.

Ports Policy

The provisions on port policy in the treaty should include rules on:

- A transparent regulatory framework for public support to maritime ports infrastructure, and nautical and handling services providers in order to attract private investments to meet traffic demand.
- Mitigating environmental impacts of operations in ports as vital nodes of transport and industrial areas for the benefit of citizens' quality of life and natural heritage around ports.
- Enhancement of port security as applicable beyond the ship/port interface in accordance to the EC standards and the relevant joint IMO/ILO code of practice.

BORDER CROSSING FACILITATION

Taking into consideration the need for balancing the supply chain security and border crossing facilitation, the treaty should include rules on:

- Border crossing facilitation actions that aim to improve the functioning of the core regional transport network in order to increase the fluidity of the transport flows in the Western Balkan Region and between the Region and the EU.
- Promotion of “one-stop” offices through shared facilities.
- Simplification and harmonisation of trade and transport related documentation in line with the EU practice.
- Promotion of and support for the implementation of the relevant international Conventions and agreements as well as effective enforcement thereof.

INSTITUTIONAL PROVISIONS

Based upon and integrating the existing structures created in the Memorandum of Understanding on the development of the South East Europe Core Regional Transport Network, it is envisaged to establish the following bodies:

- **A Ministerial Council** to take strategic decisions regarding the agreement and its further development. It should meet every two years or as necessary.
- **A Regional Steering Committee** to monitor the timely and coordinated implementation of the Transport Community. The Regional Steering Committee should also organise Donors’ Conferences and involve stakeholders when relevant. The Regional Committee shall make recommendations and take decisions, which the contracting parties shall put into effect.

- **Technical Committees**, reporting to and supporting the work of the Regional Steering Committee, responsible for the proper implementation of the agreement for each transport mode. A specific Technical Committee for environment and a Social Forum will also be set up to ensure proper implementation of the transport related environmental and social *acquis*. Each Technical Committee will act as the appeal body in the framework of the dispute settlement provisions.
- **A permanent Secretariat** should also be set up to provide administrative and technical support to the Ministerial Council, to the Committees and the Social Forum. Financial contributions from the participants are envisaged to underpin commitment and ownership towards the objectives of the treaty.

Each party to the Treaty should be represented in the different bodies. The representation of the European Community should be organised at an appropriate level according to normal Community procedures and practices. Participation as an observer in the above bodies shall be open to all interested EU Member States.⁵

MANAGEMENT OF THE AGREEMENT

Each Party shall be responsible for enforcement of the provisions of the treaty within the framework of its competencies.

The agreement should provide for an appropriate dispute settlement mechanism and safeguard measures, analogous to those contained in the European Common Aviation Agreement.

The possibility for accession to this treaty of other interested countries with particular contractual relations with the EC should be foreseen.

⁵ HU, supported by BG, suggests to replace this paragraph with the following text:
 "Participation in the above institutions shall be open to all EU Member States. In any event, this shall include Italy, Austria, Slovenia, Hungary, Romania, Bulgaria and Greece, and may include, on a voluntary basis, other interested Member States."

CONDUCT OF THE NEGOTIATIONS

The Commission shall be assisted, during the negotiations, by a Special Committee designated by the Council. The Commission will regularly inform the Council on the progress of the negotiations.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

The Commission shall provide early and clear information to the European Parliament during the conduct and conclusion of the negotiations.

Map of the Core Network

as defined in annex I of the Memorandum of Understanding of the Development
of the South East Europe Core Regional Transport Network of 11 J

STATEMENTS TO THE COUNCIL MINUTES

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