Council of the European Union

Brussels, 11 August 2021
(OR. en)

11204/21

Interinstitutional File: 2021/0259(NLE)

TRANS 501
MAR 151
COWEB 92
ELARG 44

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 August 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 461 final
Subject:	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 with regard to the establishment of a Technical Committee on Waterborne Transport and Multimodality

Delegations will find attached document COM(2021) 461 final.

Encl.: COM(2021) 461 final

EUROPEAN
COMMISSION

Brussels, 9.8.2021
COM(2021) 461 final

2021/0259 (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 with regard to the establishment of a Technical Committee on Waterborne Transport and Multimodality

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Regional Steering Committee of the Transport Community in connection with the envisaged adoption of a Decision of the Regional Steering Committee concerning the establishment of a Technical Committee on Waterborne Transport and Multimodality.

2. CONTEXT OF THE PROPOSAL

2.1. The Transport Community Treaty

The European Union is a party to the Transport Community Treaty (TCT), which has been applied provisionally since 2017. The Treaty aims to create a Transport Community in the field of road, rail, inland waterway and maritime transport as well as the development of the transport network between the European Union and the South East European Parties. The Treaty entered into force on 1 May 2019[1].

2.2. The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the TCT. It is responsible for the administration of the TCT and for ensuring its proper implementation. For this purpose, it makes recommendations and takes 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,

(i) adopts the annual budget of the Transport Community,

(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.

[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

2.3. The envisaged act of the Regional Steering Committee

During its next meeting, the Regional Steering Committee is to adopt a Decision Establishing a Technical Committee for Waterborne Transport and Multimodality ('the envisaged act').

The envisaged act will become binding on the parties in accordance with Article 25(1) of the TCT, which provides: 'A decision of the Regional Steering Committee shall be binding upon the Contracting Parties'.

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

The adoption of this decision by the Regional Steering Committee is necessary for the proper implementation of the TCT in the creation of a Transport Community in the field of road, rail, inland waterway and maritime transport as well as the development of the transport network between the European Union and the South East European Parties. A Technical Committee on Waterborne Transport and Multimodality will aim to address critical issues in waterborne transport (maritime affairs, inland waterways and ports) as well as multimodality aspects and promote their efficient use. As the Union is a party to the TCT, it is necessary to establish a Union position.

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 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 a Treaty, namely the Transport Community Treaty.

The acts which the Regional Steering Committee is called upon to adopt constitute acts having legal effects. In accordance with Article 26 of the TCT, the Regional Steering Committee is empowered to take decisions to establish technical committees. By their nature, and as a matter of international law governing the Regional Steering Committee, those decisions contain elements that affect the legal position of the parties to the TCT and therefore also of the Union. Consequently, they must be considered as having legal effects.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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

---

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

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.

4.2.2. Application to the present case

The envisaged act is 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 its horizontal nature, the envisaged act 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.

5. PUBLICATION OF THE ENVISAGED ACT

In accordance with Article 25(2) of the TCT, the decisions of the Regional Steering Committee shall be published in the Official Journal of the European Union.

2021/0259 (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 with regard to the establishment of a Technical Committee on Waterborne Transport and Multimodality

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 approved on behalf of the Union by Council Decision (EU) 2019/392[3] and entered into force on 1 May 2019.

(2) The Regional Steering Committee was established by the TCT for the administration and the proper implementation of the TCT. Pursuant to Article 26 of the TCT, the Regional Steering Committee may adopt decisions to establish technical committees.

(3) Technical committees may make proposals in their sphere of responsibility to the Regional Steering Committee for decision. The technical committees consist of representatives of the Contracting Parties. Participation as an observer is open to all EU Member States.

(4) The Regional Steering Committee is shortly to adopt a decision to establish a Technical Committee on Waterborne Transport and Multimodality.

(5) The establishment of a Technical Committee on Waterborne Transport and Multimodality will facilitate the proper implementation of the TCT in the creation of a Transport Community in the field of road, rail, inland waterway and maritime transport as well as the development of the transport network between the European Union and the South East European Parties.

(6) A Technical Committee on Waterborne Transport and Multimodality should aim to address critical issues in waterborne transport (maritime affairs, inland waterways and ports) as well as multimodality aspects and promote their efficient use.

(7) It is appropriate to establish the position to be taken on the Union's behalf in the Regional Steering Committee, as such decisions are necessary for the implementation of the TCT and will be binding upon the Union,

[3] 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.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Regional Steering Committee set up by the Treaty establishing the Transport Community as regards establishing a Technical Committee on Waterborne Transport and Multimodality shall be based on the draft act of the Regional Steering Committee attached to this Decision.

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

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President