Council of the European Union

Brussels, 18 February 2020
(OR. en)

5405/20

Interinstitutional File:
2020/0028(NLE)

TRANS 21
COWEB 4

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 February 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 61 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Regional Steering Committee of the Transport Community as regards certain budgetary matters in relation to the implementation of the Treaty establishing the Transport Community

Delegations will find attached document COM(2020) 61 final.

Encl.: COM(2020) 61 final

EUROPEAN
COMMISSION

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COM(2020) 61 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Regional Steering Committee of the Transport Community as regards certain budgetary matters in relation to the implementation of the Treaty establishing the Transport Community

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a 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') in connection with the envisaged adoption by the Regional Steering Committee of a decision on the 2020 budget of the Transport Community.

2. CONTEXT OF THE PROPOSAL

2.1 The Treaty establishing the Transport Community

The European Union is a party to the TCT, which has entered into force on 1 May 2019. Through Decision 2019/1 of the Regional Steering Committee, the Commission has been mandated to implement the budget of the Transport Community until the apointment of the Director of the Permanent Secretariat of the Transport community becomes effective.

2.2 The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the TCT and it is responsible for the administration of the TCT and for ensuring its proper implmentation. 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 Seretariat 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 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.

2.3 The envisaged acts of the Regional Steering Committee

The Regional Steering Committee is to adopt a decision on the budget of the Transport Community for 2020. The envisaged decision will become legally binding on the parties under Article 25(1) of the TCT.

Budget

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 South East European Parties.

For 2019, the total budget amounted to **EUR 1.630 M**. The EU contribution was of a total amount of **EUR 1.304 M,** corresponding to 80% of the total budget of the Permanent Secretariat to cover its running costs for 2019.

In accordance with point (a) of Article 28 of the TCT, the Permanent Secretariat, has set up the draft budget for the year 2020, taking into consideration the progressive appointment of the staff of the Permanent Secretariat that would allow it to become fully operational and autonomous. The budget amounts to total **EUR 3.000 M** of which **EUR 2.400 M** (80%) from the EU[1] and **EUR 0.6 M** for the South East European Parties.

This amount should cover the remaning costs linked to the setting up of the Permanent Secretariat as well as its running costs. According to Annex I to the Headquarters Agreement between the Transport Community and Serbia, the host country, Serbia provides free of charge the offices of the Permanent Secretariat and some of the equipment and services related to these offices (furniture, security, electricity, water and cleaning).

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

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

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

[1] Commission Implementing Decision of 19.7.2019, C(2019) 5515

binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[1].

4.1.2 Application to the present case

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

The act which the Regional Steering Committee is called upon to adopt constitutes an act having legal effects. In accordance with Article 35 of the TCT, the Regional Steering Committee is empowered to adopt the budget of the Transport Community. By their nature, and as a matter of international law governing the Regional Steering Committee, this act contains elements that affect the legal position of the parties to the TCT and therefore also of the Union. Consequently, it must be considered as having legal effects.

The envisaged act 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.

4.2.2. Application to the present case

The envisaged act is necessary for the proper functioning of the Transport Community. 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 pertains 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.

[1] Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61to 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) 2017/1937[1]. It has been approved on behalf of the European Union on 4 March 2019[2] and has entered into force on 1 May 2019.

(2) Pursuant to Article 35 of the TCT, the Regional Steering Committee ('the Steering Committee') shall adopt the budget of the Transport Community every year.

(3) The Regional Steering Committee of the Transport Community is to adopt a decision on the budget of the Transport Community for 2020 in order to ensure that the TCT is implemented.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Steering Committee, as such a decision is necessary for the functionning of the Permanent Secretariat of the Transport Community, and will have legal effects vis-à-vis the Union.

(5) The empowerment of the Commission to provisionally implement the budget of the Transport Community does not alter the essential character of the powers conferred on that institution by the Treaty on European Union and the Treaty on the Functioning of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Regional Steering Committee of the Transport Community as regards the budget of the Transport Community for the year 2020 shall be based on the draft decision of the Regional Steering Committee attached to this Decision.

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1 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).

2 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.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President