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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	WK 2210/2021
Subject:	Declaration of Locarno on developing the railway system – Authorisation to sign on behalf of the European Union – Approval of the Council statement

1. On 2 September 2020, the Commission briefly informed the Land Working Party about the imminent signature of the "Declaration of Locarno on developing the railway system" by eight Member States (Austria, Belgium, France, Germany, Italy, Luxembourg, The Netherlands and Slovenia), Switzerland and Liechtenstein. This Declaration refers to the importance of international cooperation and coordination to help shift more transalpine traffic from road to rail.
2. On 15 December 2020, the Commission requested the Council to authorise the Commission to sign that Declaration on behalf of the European Union in a cover note to the Declaration already signed by the ten countries mentioned above.
3. At the meeting of the Land Working Party held on 26 January 2021, a number of delegations raised concerns about the correctness of the procedure followed by the Commission in this case and highlighted that the matter was not brought to the Council's attention at an earlier stage.

4. In particular, as regards the procedure, it should be recalled that, in December 2017, the Secretaries-General of the Council, of the Commission and of the European External Action Service signed Arrangements for non-binding instruments (NBIs) adopted on behalf of the European Union, as a follow-up to the judgment of the Court of Justice in Case C-660/13.¹ According to those arrangements, the Commission should seize the Council sufficiently in advance, by means of a written note, of the intention to enter into discussions to draw up an NBI (preparatory phase). In a second stage, before the adoption or agreement of an NBI, the draft instrument as provisionally agreed should be submitted to the Council together with a cover note with a view to ensuring its authorisation.
5. With regard to the Locarno Declaration, as it also indirectly emerges from the above mentioned cover note submitted by the Commission, the Council was not seized of a written note by the Commission at the stage of the preparatory phase.
6. While recognising that the Arrangements were not fully respected, the power to assess the Union's interest in authorising the Commission to sign NBIs and, in this particular case the Locarno Declaration, on behalf of the European Union, lies with the Council.
7. On the basis of the discussion held at the Land Working Party on 26 January 2021 and of the comments provided by delegations after that meeting, it has been established that it would be in the Union's interest to authorise the Commission to sign the Locarno Declaration on behalf of the European Union. As also indicated in the Declaration, it is however important to underline the non-binding nature of that Declaration and also that it does not prejudice any future decisions relating to financial measures or Union law. It is also necessary to emphasise the importance of respect of the NBI Arrangements.

¹ Document ST 15367/17.

8. On 24 February 2021, at an informal videoconference, the Presidency informed the members of the Land Working Party about the content of the present note (in the form of a draft²) and about the next steps, and presented a draft Statement of the Council relating to the procedure. Only one delegation intervened stressing the non-binding nature of the Declaration while, nevertheless, confirming its support for the way forward and for the Statement. In the absence of any expressions of opposition, the Presidency thus acknowledged the support of the delegations to its proposed approach and pathway.
9. In the light of the above, subject to the confirmation by the Permanent Representatives Committee, the Council, at its first available meeting, is invited to:
- authorise the Commission to sign, on behalf of the European Union, the annexed Locarno Declaration set out in document ST 6471/21 ADD 1; and
 - approve the accompanying Council statement set out in document ST 6471/21 ADD 2.
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² Document WK 2210/21.