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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 April 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 159 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 as regards certain administrative and staff matters and the setting up of financial rules for the Transport Community

Delegations will find attached document COM(2020) 159 final.

Encl.: COM(2020) 159 final

EUROPEAN
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Brussels, 24.4.2020
COM(2020) 159 final

2020/0064 (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 administrative and staff matters and the setting up of financial rules for 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 decisions as regards the travel, reimbursement of expenses and financial rules and procedures applicable to 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 been applied provisionally since 2017 and has 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 and 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 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 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,

[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

(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 decisions on the travel rules concerning staff of the Transport Community, on the rules for the reimbursement of expenses incurred by external experts invited to attend meetings of the Transport Community, and on the procedure for the implementation of the budget of the Transport Community and the presenting and auditing of accounts.

The envisaged decisions will become legally binding on the parties in accordance with Article 25(1) of the TCT.

Budget and Financial Rules

Until the Director of the Permanent Secretariat of the Transport Community is appointed, the budget is directly managed by the European Commission, as mandated by the Regional Steering Committee[2], and in accordance with the Financial Rules applicable to the general budget of the Union.

The adoption of internal financial rules will enable the Director of the Permanent Secretariat, once appointed, 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 these decisions by the Regional Steering Committee is necessary for the implementation of the TCT and for the full financial authonomy of the Permanent Secretariat. 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 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*".

[2] Decision No 2019/1 of the Regional Steering Committee of the Transport Community

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*'[3].

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 constitute 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 notably for the working conditons of the Secretariat's staff. Under Article 35 of the TCT, the Regional Steering Committee is empowered to adopt decisions specifying the procedure for the implementation of the budget, for presenting and auditing accounts and for inspection. By their nature, and as a matter of international law governing the Regional Steering Committee, those rules 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 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.

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 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.

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[3] 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.

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.

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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[4]. It has been approved on behalf of the European Union on 4 March 2019[5] and has entered into force on 1 May 2019.

(2) Pursuant to Article 30 and Article 35 of the TCT, the Regional Steering Committee may adopt rules on the working conditions of the staff of the Permanent Secretariat of the Transport Community, and on the implementation of the budget and the presenting and auditing accounts.

(3) The Regional Steering Committee of the Transport Community ('the Steering Committee') is to adopt decisions on on the travel rules concerning staff of the Transport Community, on the rules for the reimbursement of expenses incurred by external experts invited to attend meetings of the Transport Community, and on the procedure for the implementation of the budget of the Transport Community and the presenting and auditing of accounts..

(4) It is appropriate to establish the position to be taken on behalf of the Union in the Steering Committee, as such decisions are necessary to good functioning of the Permanent Secretariat of the Transport Community, and will have legal effects vis-à-vis the Union.

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4 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).

5 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.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Steering Committee of the Transport Community shall be to support the adoption of the decisions on the travel rules concerning staff of the Transport Community, on the rules for the reimbursement of expenses incurred by external experts invited to attend meetings of the Transport Community, and on the procedure for the implementation of the budget of the Transport Community and the presenting and auditing of accounts. It shall be based on the draft decisions of the Steering Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President