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2020/0336 (NLE)

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 the adoption of the budget of the Transport Community for 2021**

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 set up under the Treaty establishing the Transport Community ('the TCT') in connection with the envisaged adoption of a decision on the 2021 budget of the Transport Community.

2. CONTEXT OF THE PROPOSAL

2.1. The Treaty establishing the Transport Community

The Treaty establishing the Transport Community ('the Agreement') 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 Agreement entered into force on 1 May 2019.

The European Union is a party to the Agreement¹.

2.2. The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the Agreement. It is responsible for the administration of the Agreement and for ensuring its proper implementation. For this purpose, it makes recommendations and takes decisions in the cases provided for in the Agreement. Notably, the Regional Steering Committee:

- (a) prepares the work of the Ministerial Council,
- (b) decides on the establishment of technical committees,
- (c) as regards newly adopted EU acts, takes appropriate action, notably through the revision of Annex I to the Agreement,
- (d) appoints the Director of the Permanent Secretariat after consulting the Ministerial Council,
- (e) may appoint one or more Deputy Directors of the Permanent Secretariat,
- (f) lays down rules of the Permanent Secretariat,
- (g) may review, by way of a decision, the level of budget contributions,
- (h) adopts the annual budget of the Transport Community,
- (i) adopts a decision specifying the procedure for the implementation of the budget, for presenting and auditing accounts and for inspection,
- (j) takes decisions on disputes brought by the Contracting Parties,
- (k) adopts general principles in the area of access to documents, in respect of documents held by bodies established by, or under, the Agreement,
- (l) adopts annual reports to the attention of the Ministerial Council on the implementation of the Comprehensive Network;
- (m) in respect of certain Union acts, establishes time limits and ways for the transposition by the South East European Parties.

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

The Regional Steering Committee is composed of a representative, and an alternate representative, of each of the Contracting Parties. Participation as observers is open to all EU Member States.

The Regional Steering Committee acts by unanimity.

2.3. The envisaged act of the Regional Steering Committee

In 2021, during its first session/meeting, the Regional Steering Committee is to adopt a decision regarding the budget of the Transport Community for 2021 ('the envisaged act').

The purpose of the envisaged act is to determine the annual budget of the Transport Community for 2021.

The envisaged act will become binding on the parties in accordance with Article 25(1) of the Agreement, which provides: 'A decision of the Regional Steering Committee shall be binding upon the Contracting Parties. Whenever a decision taken by the Regional Steering Committee contains a requirement for action to be taken by a Contracting Party, the said Party shall take the necessary measures and inform the Regional Steering Committee thereof.'

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

The contribution to the budget of the Transport Community is set out in Annex V to the Agreement. The share of the Union amounts to 80% of the budget, while the remaining 20% shall be provided by the Western Balkans parties.

For 2020, the budget amounted to total **EUR 3.000 M** of which **EUR 2.400 M** (80%) from the EU and **EUR 0.6 M** for the Western Balkan parties.

For 2021, it is proposed that the budget is increased to **EUR 3.525 M**, of which **EUR 0.225 M** will be carried over from the 2020 budget, 80% of the fresh credits will come from the EU (**EUR 2.640 M**)² and the remaining 20% of the fresh credits (**EUR 0.66 M**) from the South East European Parties.

This amount will cover the running costs of the Permanent Secretariat and the organisation of the meetings of the different bodies of the Transport Community. The proposed increase is justified by the forthcoming recruitment of additional staff, the planned higher frequency of technical committees meetings, the purchase of the outstanding IT equipment and software, and the planned more frequent travel of the Director and the officials of the Permanent Secretariat. 2021 is expected to be the first year of normal activity of the Permanent Secretariat, with all the management and non-management staff in place, as well as the main administrative framework in force. According to Annex I to the Headquarters Agreement between the Transport Community and Serbia, the host country, Serbia provides the offices of the Permanent Secretariat and some of the equipment and services related to these offices (furniture, security, electricity, water and cleaning) free of charge.

The adoption of this decision by the Regional Steering Committee is necessary for the implementation of the Agreement and for the functioning of the Permanent Secretariat.

² Commission Implementing Decision of 25.06.2020, C(2020) 4356

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*’³.

4.1.2. Application to the present case

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 and this decision is binding on the parties to the TCT. 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 does 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 TCT. In turn, the TCT pursues objectives and has components in the area 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. All these elements are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 91 and 100(2) TFEU.

³ 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.

4.3. 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 Treaty establishing the Transport Community, the decisions of the Regional Steering Committee shall be published in the Official Journal of the European Union.

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**on the position to be taken on behalf 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 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) 2017/1937⁴. On 4 March 2019 it was approved on behalf of the European Union by means of Council Decision (EU) 2019/392⁵. It entered into force on 1 May 2019.
- (2) Pursuant to Article 35 of the Agreement, the Regional Steering Committee of the Transport Community ('the Steering Committee') shall adopt the budget of the Transport Community every year. According to the same provision, the Steering Committee is empowered to adopt decisions specifying the procedure for the implementation of the budget.
- (3) The Steering Committee, during its meeting in December 2020, is to adopt a decision on the budget of the Transport Community for 2021; or should the item not be treated during that meeting, the adoption will be scheduled for the subsequent meeting.
- (4) The proposed budget of the Transport Community for 2021 is needed for the proper functioning of the bodies of the Transport Community. It covers the costs for human resources, travel, IT equipment and software, as well as operational expenditure such as studies, technical assistance and the organisation of conferences and meetings.
- (5) 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 functioning of the Permanent Secretariat of the Transport Community, and will have legal effects vis-à-vis the Union,

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 the Union's behalf in the Regional Steering Committee of the Transport Community as regards the budget of the Transport Community for the year 2021 shall be based on the draft decision of the Regional Steering Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*