



Brussels, 21.10.2022
COM(2022) 538 final

2022/0342 (NLE)

Proposal for a

COUNCIL DECISION

as regards the revision of the financial rules for the Transport Community

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the 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') as regards the revision of the financial rules and procedures applicable to the Transport Community.

2. CONTEXT OF THE PROPOSAL

2.1 The Treaty establishing the Transport Community

On 1 May 2019, the Republic of Albania, Bosnia and Herzegovina, the Republic of North Macedonia, Kosovo* (hereinafter referred to as Kosovo), Montenegro and the Republic of Serbia had ratified the TCT. The European Union is a party to the TCT and it adopted on 4 March 2019 a Council Decision on the conclusion of the TCT,¹ which entered into force on 1 May 2019.

2.2 The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the TCT to be responsible for the administration of the TCT and to ensure its proper implementation. For this purpose, it shall make recommendations and take 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 TCT,
- (j) adopts a decision specifying the procedure for the implementation of the budget, for presenting and auditing accounts and for inspection,

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

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. 1–4

(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.

The Regional Steering Committee consists of one representative and one alternate representative of each Contracting Party. Participation as observer shall be open to all EU Member States. The Regional Steering Committee acts by unanimity.

2.3 The envisaged act of the Regional Steering Committee

The draft Council decision relates to the adoption of a decision by the Regional Steering Committee on the revision of the financial rules and auditing procedures applicable to the Transport Community. The current financial rules and auditing procedures applicable to the Transport Community have been adopted in 2020. The envisaged decision will become legally binding on the parties under Article 25(1) of the TCT.

Budget and Financial Rules

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 Western Balkans parties.

The revision of the internal financial rules will address some constraints affecting the operations of the Permanent Secretariat. Changes concern the introduction of carryovers of committed expenditure from current to future fiscal year; the possibility for repayment of unused budgetary contributions, budget re-allocation, and the introduction of principles and simplified procurement rules for contracts valued under the threshold of Directive 2014/24/EU.

The revision of the financial rules will therefore enable the Director of the Permanent Secretariat to address identified constraints following two years of activity and 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 this decision by the Regional Steering Committee is necessary for the implementation of the TCT and for the full financial autonomy of the Permanent Secretariat. As the Union is a party to the TCT, it is necessary to establish a Union position.

In this respect, it shall be recalled that the TCT is one element liable to strengthen regional cooperation within the Western Balkans, as further explained in the Commission's proposal for a Council decision on the signing of the TCT [COM(2017)324 final, sub "General Context"].

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 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 an agreement, namely the TCT.

The acts which the Regional Steering Committee is called upon to adopt constitute acts having legal effects. The Regional Steering Committee is empowered to lay down rules of the Permanent Secretariat in accordance with Article 30 of the TCT and to appoint the Director and one or more Deputy Directors. Moreover, under Article 35 of the TCT, the Regional Steering Committee is empowered to adopt the budget and the related financial governing rules. 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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218 (9) will have to include, exceptionally, the various corresponding legal bases.

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

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

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.

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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) 2017/1937³.
- (2) The Treaty establishing the Transport Community has been approved on behalf of the European Union on 4 March 2019⁴ and entered into force on 1 May 2019.
- (3) The Regional Steering Committee was established by the TCT for the administration and the proper implementation of the TCT. The TCT requires the Regional Steering Committee to adopt rules on the implementation of the budget and for presenting and auditing accounts.
- (4) The Regional Steering Committee is shortly to adopt decisions on the revision of financial rules and auditing procedures applicable to the Transport Community.
- (5) It is appropriate to establish the position to be taken on behalf of the Union within the Regional Steering Committee, as such decisions are necessary for the good functioning of the Permanent Secretariat of the Transport Community, and will be binding upon the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Regional Steering Committee of the Transport Community as regards the revision of the financial rules applicable to the Transport Community shall be based on the draft decision of the Regional Steering Committee attached to this Decision.

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

³ 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).

⁴ 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. 1–4

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*