



Brussels, 29.5.2018  
COM(2018) 351 final

2018/0182 (NLE)

Proposal for a

**COUNCIL DECISION**

**on 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**

## 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 envisaged decision on the adoption by the Regional Steering Committee of its Rules of Procedure.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1 The Treaty establishing the Transport Community**

Following signature, the TCT applies provisionally in accordance with Article 41(3) thereof. For the Union, provisional application is provided by the Council Decision on the signing, on behalf of the European Union, and provisional application of the Treaty establishing the Transport Community<sup>1</sup>.

The European Union is a party to the TCT.

#### **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,
- (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;

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<sup>1</sup> OJ L 278, 27.10.2017, p. 1.

- (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 decision concerns the adoption of the Rules of Procedure of the Regional Steering Committee in accordance with Article 24(5) of the TCT. The draft Rules of Procedure cover subjects such as participation at the meetings of the Regional Steering Committee, the Presidency of the Regional Steering Committee, the preparation of meetings of the Regional Steering Committee and the procedural rules applicable to such meetings, procedures in respect of the actions to be taken by the Regional Steering Committee, disclosure of information, as well as a number of final provisions. According to their proposed terms, the Rules of Procedure enter into force on the day of their adoption. The decision on the adoption of the Rules of Procedure of the Regional Steering Committee will be essential for the timely implementation of the TCT.

The envisaged decision will become legally binding on the parties under Article 24(5) of the TCT.

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

It is essential for the Regional Steering Committee to adopt its Rules of Procedure in accordance with Article 24(5) of the TCT in order to ensure the appropriate execution and implementation of its tasks pursuant to the TCT. As the Union is a party to the TCT, a Union position is needed.

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*'<sup>2</sup>.

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<sup>2</sup> 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.

#### *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. The Regional Steering Committee is empowered to adopt its rules of procedure in accordance with Article 24(5) of the TCT. By their nature, and as a matter of international law governing the Regional Steering Committee, those rules contain elements that are legally binding upon the members of the Regional Steering Committee and therefore also upon the representative of the Union. Consequently, they 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.

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) TFEU will have to include, exceptionally, the various corresponding legal bases.

#### *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 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. 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.

### **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.

Proposal for a

## COUNCIL DECISION

### **on 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 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<sup>3</sup>.
- (2) In accordance with Article 41(3) of the TCT, the TCT applies provisionally between the Union, Albania, Bosnia and Herzegovina and Kosovo\* since 9 October 2017, and between these parties and Serbia since 29 November 2017.
- (3) Pursuant to Article 24(5) of the TCT, the Regional Steering Committee is to adopt its rules of procedure.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Regional Steering Committee, as the decision on the rules of procedure of the Regional Steering Committee will be binding on the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf within the Regional Steering Committee 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 of the Council.

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<sup>3</sup> 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).

\* 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.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*