



Council of the
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COWEB 200
ALB 9
BIH 25
ELARG 72

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Subject: Draft Council Decision on the complementary negotiating directives in the framework of the negotiations of the Transport Community Treaty between the European Community and Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council

- Adoption

Delegations will find attached the partially declassified version of the above-mentioned document.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 October 2009

13883/09

RESTREINT UE

**TRANS 361
COWEB 200
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REPORT

From : COREPER

To : Council

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Subject : Draft Council Decision on the complementary negotiating directives in the framework of the negotiations of the Transport Community Treaty between the European Community and Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council
- Adoption

Introduction

1. On 12 June 2008, the Council adopted a Council Decision authorising the Commission to open negotiations on behalf of the European Community with the Western Balkan Partners on a Treaty establishing a Transport Community ¹. This Transport Community Treaty is part of the strategy for enhancing the European prospects of the countries in the Western Balkans.

¹ Doc. 10259/08 RESTREINT UE.

Eventually, it should accelerate the integration of the transport systems in the region as well as integration with those of the EU. It should provide operators and investors in the transport sector with legal certainty, thus stimulating investment and economic development.

2. The negotiating directives, annexed to the Council Decision of 12 June 2008, covered all land transport modes. However, a decision on the substance of the negotiating directives dealing with the creation of a Transport Community in the area of road transport was postponed.

Progress within the Council preparatory bodies

NOT DECLASSIFIED

Legal Basis

3. It follows from the judgement given by the Court of Justice on 1 October 2009 in Case C- 370/07, that decisions, adopted pursuant to Article 300 TEC which have binding legal effects, which is the case of decisions on negotiating directives, must contain an explicit reference to the legal basis on which they are adopted. This should be understood as covering both the procedural and the material legal bases, as the aim of this obligation is *inter alia* to make sure that the principle of attribution of competence is respected.

According to previous practice in the Council, it has not always been considered necessary to indicate the legal bases in a negotiating mandate. In the present case, for example, only the procedural legal basis had been indicated, leaving out the material legal basis.

This previous practice is, as stated above, not advisable any more as a consequence of the judgement. In order to respect the Court's ruling and for reasons of prudence, it is therefore suggested to indicate clearly the material legal basis for the adoption of these negotiating directives, which should be Article 71 TEC.

The legal basis for the future Transport Community Treaty will be determined on the basis of the actual content of the Commission's future proposal for the signature and conclusion of that Treaty.

Conclusion

4. The Council is invited to:
 - examine the text as set out in the Annex to this report and to adopt the Decision on the complementary negotiating directives in the framework of the negotiations of the Transport Community Treaty between the European Community and the Western Balkan Partners;
 - enter into its minutes the statements contained in Annexe II to this report.

DRAFT
COUNCIL DECISION

on the complementary negotiating directives in the framework of the negotiations of the Transport Community Treaty between the European Community and Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article [71] and Article] 300, paragraph 1, thereof,

WHEREAS:

- (1) On 12 June 2008, the Council adopted the Decision to authorise the Commission to open negotiations on behalf of the European Community with Albania, Bosnia & Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia as well as Kosovo, under Resolution 1244(1999) of the United Nations Security Council on a Treaty establishing a Transport Community ².

² Document 10259/08 RESTREINT UE.

- (2) The negotiating directives contained in the Decision provide that the Treaty shall be based on, and shall not go beyond, the Community acquis on transport and that the Treaty shall be without prejudice to bilateral agreements between Member States and third countries. They also provide that the Transport Community Treaty should include rules on the progressive achievement, on the basis of defined steps, of integrated road transport markets between the Western Balkan Partners, and between the region and the European Community, with progress between the different steps linked to the progressive adoption and implementation, by each of the different Western Balkan Partners, of the relevant elements of the road transport acquis. The negotiating directives also provide that negotiations on the substance of this provision should only take place following adoption by the Council of complementary negotiating directives.
- (3) Given the geographic specificity of the Western Balkan region, situated in the middle of the European Union, and the ongoing process in relation to the Stabilisation and Association Process, and consequently the importance of an integrated Western Balkan transport for the Common Transport Policy, a Treaty establishing a Transport Community, including provisions on road transport, is highly desirable,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission shall conduct the negotiations on the provisions on road transport also in accordance with the complementary negotiating directives, as set out in the Annex to this Decision.

Done at

For the Council of the European Union,
The President

**COMPLEMENTARY NEGOTIATING DIRECTIVES
IN THE FRAMEWORK OF THE NEGOTIATIONS
FOR A TREATY ESTABLISHING A TRANSPORT COMMUNITY BETWEEN THE
EUROPEAN COMMUNITY AND ALBANIA, BOSNIA & HERZEGOVINA, CROATIA,
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MONTENEGRO AND
SERBIA AS WELL AS KOSOVO, UNDER RESOLUTION 1244(1999) OF THE UNITED
NATIONS SECURITY COUNCIL**

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A. EU Road Transport acquis as of 28 May 2009

1. Safety and social rules;

- Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).
- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).
- Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).
- Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organization of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

2. Transport of dangerous goods;

- Directive 2008/68/EC of the European parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p.13)

- Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ L 249, 17.10.1995, p. 35).
3. Environmental and safety technical requirements for road vehicles regarding weights and dimensions, roadworthiness testing and speed limitations devices, including their enforcement by roadside checks;
- Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27).
 - Council Directive 92/24/EEC of 31 March 1992 relating to speed limitation devices or similar speed limitation on-board systems of certain categories of motor vehicles (OJ L 129, 14.5.1992, p. 154).
 - Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ L 235, 17.9.1996, p. 59).
 - Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ L 46, 17.2.1997, p. 1).
 - Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (OJ L 203, 10.8.2000, p.1).

4. Access to market in road transport, including Community licences, access to the occupation based on good repute, financial standing and professional competence for undertakings with stable and effective establishment including their enforcement by checks and their integration in a European network of national registers of road transport undertakings;
- Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations (OJ L 124, 23.5.1996, p. 1).
 - Directive 2006/94/EC of the European Parliament and of the Council of 12 December 2006 on the establishment of common rules for certain types of carriage of goods by road (OJ L 374, 27.12.2006, p. 5).
 - Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ L 95, 9.4.1992, p. 1).
 - Council Regulation (EEC) No 3916/90 of 21 December 1990 on measures to be taken in the event of a crisis in the market in the carriage of goods by road (OJ L 375, 31.12.1990, p. 10).
5. Training of professional drivers;
- Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualifications and periodic training of drivers of certain road for the carriage of goods or passengers, amending Council regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).

6. Driver licensing;

- Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ L 237, 24.8.1991, p. 1)

7. Annual vehicle taxes and excise for duty for fuel; proportionate road charging without discrimination based on nationality or the origin or destination of the haulier, where such charges are levied and the interoperability of electronic road toll collection systems;

- Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51)

Directive 99/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42).

- Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community (OJ L 166, 30.4.2004, p. 124).

B. Environmental requirements

- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

- SEA protocol to the ESPOO convention.

"All plans and programmes in the field of Transport will where applicable be subject to an environmental assessment similar to that provided for in the SEA directive. In addition, transboundary aspects should be addressed in line with the requirements of the SEA protocol to the ESPOO convention."

- Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

"All projects falling under the scope of the Treaty will be subject to an environmental impact assessment in line with EU standards. In addition, transboundary aspects should be addressed in line with the requirements of the ESPOO convention."

- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

"If a project is likely to affect sites of nature conservation importance, an appropriate nature conservation assessment shall be made, equivalent to that provided for in art.6 of the Habitats directive."

- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

"All transport projects on navigation falling under the scope of this Treaty should be developed and implemented in line with the provisions of Article 4.7 of the Water Framework Directive".

All transport projects on navigation falling under the scope of this Treaty should where applicable be carried out in line with the Joint Statement on Inland Navigation and Environmental Sustainability in the Danube River Basin as endorsed by the International Commission for the Protection of the Danube River (ICPDR), Danube Commission and Sava Commission

- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58).
Implementation date to be agreed

 - Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13).
Implementation date to be agreed
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Statement to the Minutes of the Council

"The Council underlines that neither these negotiating directives nor the ensuing Treaty can be considered as setting a precedent with regard to market integration between the European Community and other third countries."

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Statement to the Minutes of the Council by the United Kingdom

"The United Kingdom welcomes the work by the Presidency and the Commission on this complementary negotiating directive for this agreement which will facilitate market integration between the Western Balkans and the EU, which is essential for economic growth of this region and will help the West Balkans partners to prepare for eventual accession.

Recognising that market access and certain areas of compliance required of Western Balkan partners, as listed in paragraph 1 of the Annex to the proposed complementary mandate, are areas of shared external competence, the UK notes that the granting of a mandate to negotiate these areas with the Western Balkan partners does not affect the existing division of competence between the Community and the Member States."
