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EXT 1

TRANS 396
COWEB 270
ALB 9
BIH 36
ELARG 118

PARTIAL DECLASSIFICATION

of document:	15711/08
dated:	13 November 2008
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Subject:	South East Europe Transport Community

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

15711/08 EXT 1

DG C III

VH/sc

EN

ANNEX



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 November 2008

15711/08

RESTREINT UE

**TRANS 396
COWEB 270
ALB 9
BIH 36
ELARG 118**

WORKING DOCUMENT

From : Council General Secretariat

To: Delegations

No. prev. doc.: 10259/08 RESTRICTED EU TRANS 188 COWEB 155 ALB 8 BIH 16 ELARG 59

No. Cion prop.: 7559/08 RESTRICTED EU TRANS 85 COWEB 80 ALB 1 BIH 5 ELARG 18

Subject : South East Europe Transport Community

Delegations will find in Annex I a first draft of the Transport Community Treaty with the Western Balkans and in Annex II an explanatory note regarding the Treaty.

15711/08 EXT 1

ANNEX

DG C III

VH/sc

2

EN

12 November 2008

FIRST DRAFT

MULTILATERAL AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY AND
THE WESTERN BALKAN PARTNERS
ON THE ESTABLISHMENT OF
A TRANSPORT COMMUNITY

THE EUROPEAN COMMUNITY, hereinafter referred to as "the Community" or "the European Community",

and

THE WESTERN BALKAN PARTNERS

all the abovementioned hereinafter referred to together as "the Contracting Parties".

RECOGNISING the integrated character of international transport and desiring to create a South East Europe Transport Community (TC) based on the progressive integration of the transport market of the Contracting Parties on the basis of the relevant *acquis communautaire*;

CONSIDERING that the rules concerning the TC are to apply on a multilateral basis within the TC and therefore specific rules need to be defined in this respect;

AGREEING that it is appropriate to base the TC rules on the relevant legislation in force within the European Community, as laid down in Annex I to this Agreement, without prejudice to those contained in the Treaty Establishing the European Community;

BEARING IN MIND that integration of transport markets cannot be achieved in one step, but rather by means of a transition facilitated by specific arrangements of limited duration;

EMPHASISING that, where such transitional arrangements are necessary, they shall take into account existing bilateral transport agreements or arrangements;

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EMPHASISING that transport operators should be treated in a non-discriminatory manner regarding their access to transport infrastructures especially where these infrastructures are limited;

BEARING IN MIND the desire of each of the Non-EU Contracting Parties to make its laws on transport and associated matters compatible with those of the European Community, including with regard to future legislative developments within the Community;

RECOGNISING the importance of technical assistance in this perspective;

RECOGNISING that the relations between the Community and the EC Member States and Norway and Iceland must continue to be governed by the European Economic Area Agreement;

BEARING IN MIND the necessity to protect environment and to combat against climate change, the development of the transport sector needs to be sustainable;

BEARING IN MIND the necessity to ensure a sustainable social context in the Region, a social dialogue needs to be established;

BEARING IN MIND the European Perspective of the Non-EU contracting Parties as confirmed by several recent European Summits;

HAVE AGREED AS FOLLOWS:

OBJECTIVES AND PRINCIPLES

ARTICLE 1

1. The aim of this Agreement is the creation of a Transport Community in the field of road, rail, inland waterways and maritime transport as well as the development of the transport network, hereinafter referred to as the South East Europe Transport Community (TC). The TC shall be based on the progressive integration of transport market on the basis of the relevant Community *acquis* including in the areas of technical standards, interoperability, safety, security, traffic management for all modes of transport, social and environment. For this purpose this Agreement sets out the rules applicable between the Contracting Parties under the conditions set out hereafter. These rules include the provisions laid down by the legislation specified in Annex I.

2. The provisions of this Agreement shall apply to the extent that they concern road, rail, inland waterways, maritime transport and transport networks or an associated matter mentioned in Annex I.
3. This Agreement consists of Articles, setting out the general functioning of the TC, hereinafter referred to as "the Main Agreement", of Annexes, of which Annex I contains the European Community legislation applicable between the Contracting Parties in the framework of the Main Agreement, and of Protocols, of which at least one for each Non-EU contracting Party establishes the transitional arrangements applicable to it.

ARTICLE 2

1. For the purposes of this Agreement:
 - (a) the term "Agreement" means the Main Agreement, its Annexes, the acts referred to in Annex I as well as its Protocols;
 - (b) the term "Non-EU contracting Party" means the Republic of Albania, Bosnia and Herzegovina, the Republic of Croatia, Kosovo under UNSCR 1244/99, the former Yugoslav Republic of Macedonia, the Republic of Montenegro and the Republic of Serbia, or any other State or entity that shall have become a party to this Agreement pursuant to Article 49;
 - (c) the term "EC Treaty" means the Treaty Establishing the European Community;
 - (d) the term "EEA Agreement" means the Agreement on the European Economic Area and its Protocols and Annexes signed on 2 May 1992 and to which the European Community, its Member States, Iceland, Liechtenstein and Norway are parties;
 - (e) the term "TC operators" means a transport operator, which is licensed as provided for by this Agreement in accordance with the provisions of the relevant acts specified in Annex I;

- (f) the term "Regulator" means a government agency or entity that exercises a legal right to assess conformity of, to certify and control the use or sale of products or services or licences within a Contracting Party's jurisdiction and may take enforcement action to ensure that products or services marketed within its jurisdiction comply with legal requirements;
- (g) the term "Convention" means any International Convention on International Transport, opened for signature in a different international context;
- (h) the term "EC Member State" means a Member State of the European Community.

2. The use of the terms "country", "national", "nationals" or "territory" shall be without prejudice to the status of each Contracting Party under international law.

ARTICLE 3

The applicable provisions of Acts referred to or contained either in Annex I, adapted in accordance with Annex II, or in decisions of the Regional Steering Committee shall be binding upon the Non-EU Contracting Parties and be, or be made, part of their internal legal order as follows:

- (a) an act corresponding to a European Community Regulation shall be made part of the internal legal order of the respective Contracting Parties;
- (b) an act corresponding to a European Community Directive shall leave to the authorities of the respective Contracting Parties the choice of form and method of implementation.

ARTICLE 4

The Non-EU Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement and shall abstain from any measure which could jeopardise the attainment of the objectives of this Agreement.

ARTICLE 5

The provisions of this Agreement shall not affect the relations between the Contracting Parties of the EEA Agreement.

INFRASTRUCTURE

ARTICLE 6

1. The Transport Community shall identify a Core Regional Transport Network for the Non-EU contracting Party. This Core Network shall form the reference network on which the provision of the Agreement will be applicable.
2. The South East Europe Core Regional Transport Network (hereafter referred to as the Core Network) referred to in paragraph 1 is attached to this Agreement as Annex 1. Modification to this Annex may be made by decision of Regional Steering Committee on the basis of a proposal prepared by the Permanent Secretariat. 3. The Transport Community shall develop the Core Network according the Community Guidelines on the Development of Trans-European Transport Network (TEN-T) as set out in Annex 1. It shall take into account the related bilateral and multilateral agreements concluded by Member States, including the development of key links and interconnections needed to eliminate bottlenecks and to promote the interconnection of national networks.

ARTICLE 7

1. The Transport Community shall develop a 5-year rolling work plan for the development of the Core Network and the identification of priority projects of regional interest in line with the best international practice, which would contribute to balanced sustainable development in terms of economics, environmental and social impacts.

2. Among other, the 5-year rolling work plan shall;
 - (a) comply with the relevant legislation of the European Union as set out in Annex I, where appropriate or when funding of the European Union is envisaged,
 - (b) demonstrate of best value-for-money and broader socio-economic impacts, in accordance with donors' funding rules and best international standards and practice,
 - (c) give a special attention to global climate change and environmental sustainability at the stage of project definition and analysis.
3. The Transport Community shall promote the necessary studies and analyses, particularly concerning the economic viability, technical specification, environmental impact and financing mechanisms.
4. An information system shall be put in place by the Permanent Secretariat to be used by decision makers in reviewing and monitoring the condition and performance of the Core Network.

ARTICLE 8

The Non-EU contracting Parties shall implement the relevant environmental acquis with regard to transport, in particular the Strategic Environmental Assessment, Environmental Impact Assessment, nature-related and air quality-related directives as set out in Annex 1.

ARTICLE 9

4. The Non-EU Contracting Party shall continue to develop where relevant the procurement acquis according the existing Stabilisation and Association Process

ARTICLE 10

4. The Non-EU contracting Party shall develop efficient traffic management system and in particular Air Traffic Management Infrastructure in line with the Single European Sky and SESAR.

RAIL TRANSPORT

ARTICLE 11

- 1) Within the scope, conditions and delays of this Agreement and without prejudice to the provision of the relevant acts specified in Annex I, railway undertakings established in an EC Member State or by an Non-EU contracting Party shall have the right of access to the infrastructure in all Member States and Associated Parties for the purpose of operating an passenger or freight service.
- 2) Within the scope, conditions and delays of this Agreement and without prejudice to the provision of the relevant acts specified in Annex I, there shall be no restrictions on the validity of licenses of railway undertakings, their safety certificates, the certification documents of train drivers and rail vehicle authorisations granted by an EC Member State or an Non-EU contracting Party.

ROAD TRANSPORT

[to be drafted later]

INLAND WATERWAY TRANSPORT

[to be drafted later]

MARITIME TRANSPORT

[to be drafted later]

BORDER CROSSING FACILITATION

ARTICLE 12

The Transport Community shall promote Measures with a view to the removal of non-physical barriers between the Parties, to simplify and facilitate border crossing procedures and to facilitate communication between the Transport Authorities of the Parties.

Within [one year] of the date of entry into force of this Treaty, each Party that has not done it yet shall have acceded and fully implemented the following International Conventions:

- (a) the International Convention on the harmonisation of frontier controls for goods,
- (b) the Kyoto Convention on simplification and harmonisation of customs procedures,
- (c) the Convention of the international transport of goods (the TIR carnets) for road vehicles.

ARTICLE 13

Each Party that has not done it yet shall have adopted and fully implemented before the end of 2010 the five documents in use in the EU and defined under the Convention on facilitation of international maritime traffic of the International Maritime Organisation (IMO FAL forms).

ARTICLE 14

1. The Transport Community shall support the harmonisation of all trade and transport related documents before the end of [2010].
2. The Parties shall mutually recognise all trade and transport related documents in the language of the country concerned and in English, or in a mutually agreed language.

ARTICLE 15

The Transport Community shall encourage the principle of the “one-stop office”, joint inspections and the development of electronic data inter-exchange systems.

ARTICLE 16

1. The Transport Community shall encourage the establishment of common border point facilities for road and rail transport.
2. The Transport Community shall promote a sustainable cooperation between the agencies involved in the border control in the same administration as well as between the administrations of the two neighbours concerned.

NON-DISCRIMINATION

ARTICLE 17

Within the scope of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

RIGHT OF ESTABLISHMENT

ARTICLE 18

Within the scope and conditions of this Agreement and without prejudice to the provisions of the relevant acts specified in Annex I, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or a Non-EU contracting Party in the territory of any of them. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms under the conditions laid down for its own nationals by the law of the country where such establishment is effected. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or Non-EU contracting Party established in the territory of any of them.

ARTICLE 19

1. Within the scope of this Agreement and without prejudice to the provisions of the relevant acts specified in Annex I, companies or firms constituted or organised in accordance with the law of an EC Member State or a Non-EU contracting Party and having their principal place of business within the TC shall be treated in the same way as natural persons who are nationals of EC Member States.
2. The terms "companies or firms" mean companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, except those which are non-profit-making.

ARTICLE 20

1. The provisions of Articles 18 and 19 shall not apply to activities which, in the territory of any Contracting Party, are connected, even occasionally, with the exercise of official authority.
2. The provisions of Articles 18 and 19 and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action of the Contracting Parties regarding entry, residence and employment or providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

COMPETITION

ARTICLE 21

1. Within the scope of this Agreement the provisions of Annex III shall apply. Where rules on competition and state aid are included in other agreements between two or more Contracting Parties, such as Association Agreements, these rules shall apply between those Parties.
2. Articles 22, 23 and 24 shall not apply with respect to the provisions in Annex III.

ENFORCEMENT

ARTICLE 22

1. Without prejudice to paragraphs 2 each Contracting Party shall ensure that the rights which devolve from this Agreement, and in particular from the acts specified in Annex I, may be invoked before national courts.
2. All questions concerning the legality of decisions taken by European Community institutions under this Agreement, in particular under the acts specified in Annex I, shall be of the exclusive competence of the Court of Justice of the European Communities, hereinafter referred to as "the Court of Justice".

INTERPRETATION

ARTICLE 23

1. Insofar as the provisions of this Agreement and the provisions of the acts specified in Annex I are identical in substance to corresponding rules of the EC Treaty and to acts adopted pursuant to the EC Treaty, those provisions shall, in their implementation and application, be interpreted in conformity with the relevant rulings and decisions of the Court of Justice and the European Commission given before the date of signature of this Agreement. The rulings and decisions given after the date of signature of this Agreement shall be communicated to the other Contracting Parties. At the request of one of the Contracting Parties, the implications of such later rulings and decisions shall be determined by the Regional Steering Committee assisted by the Technical Committees in view of ensuring the proper functioning of this Agreement. Existing interpretations shall be communicated to the Non-EU contracting Party prior to the date of signature of this Agreement. Decisions taken by the Regional Steering under this procedure shall be in conformity with the case law of the Court of Justice.

2. When a question of interpretation of this Agreement, of the provisions of the acts specified in Annex I or of acts adopted in pursuance thereof identical in substance to corresponding rules of the EC Treaty and to acts adopted pursuant to the EC Treaty, arises in a case pending before a court or tribunal of a Non-EU Contracting Party, the court or tribunal shall ask, if it considers this necessary to enable it to give a judgement and in accordance with Annex IV, the Court of Justice to decide on the question. A Non-EU Contracting Party may, by decision and in accordance with Annex IV, stipulate the extent to which, and according to what modalities, its courts and tribunals are to apply this provision. Such a decision shall be notified to the depositary and the Court of Justice. The depositary shall inform the other Contracting Parties.
3. Where, in accordance with paragraph 2, a court of a Contracting Party against whose decisions there is no judicial remedy under national law is not able to make a referral to the Court of Justice, any judgement of such court shall be transmitted by the Contracting Party concerned to the Regional Steering Committee which shall act so as to preserve the homogeneous interpretation of this Agreement. If the Regional Steering Committee, within two months after a difference between the case law of the Court of Justice and a judgement of a court of such a Contracting Party has been brought before it, has not succeeded in preserving the homogeneous interpretation of this Agreement, the procedures laid down in Article 41 may be applied.

NEW LEGISLATION

ARTICLE 24

1. This Agreement shall be without prejudice to the right of each Non-EU Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Article and of Article 28(4) to unilaterally adopt new legislation or amend its existing legislation in the field of transport or an associated area mentioned in Annex I. The Associated Parties shall not adopt any such legislation unless it is in accordance with this Agreement.

2. As soon as a Non-EU Contracting Party has adopted new legislation or an amendment to its legislation it shall inform the other Non-EU Contracting Parties via the Regional Steering Committee not later than one month after its adoption. Upon the request of any Contracting Party, the relevant Technical Committee shall within two months thereafter hold an exchange of views on the implications of such new legislation or amendment for the proper functioning of this Agreement.
3. As regards the legislation which has been adopted between the signing of this Agreement and its entry into force and of which the other Contracting Parties have been informed, the date of referral shall be taken as the date on which the information was received. The date on which the Regional Steering Committee reaches a decision may not be earlier than sixty days after the entry into force of this Agreement.

THE MINISTERIAL COUNCIL

ARTICLE 25

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

- (a) provide general policy guidelines;
- (b) review progress on the implementation of the Agreement
- (c) shall give opinions for the appointment of the Director of the Permanent Secretariat

ARTICLE 26

The Ministerial Council shall consist of one representative of each Contracting Party. Participation as an observer shall be open to all interested Member States.

ARTICLE 27

The Ministerial Council shall meet on an annual basis.

REGIONAL STEERING COMMITTEE

ARTICLE 28

1. A Regional Steering Committee is hereby established which shall be responsible for the administration of this Agreement and shall ensure its proper implementation, without prejudice to Article 15. For this purpose it shall make recommendations and take decisions in the cases provided for in this Agreement. The decisions of the Regional Steering Committee shall be put into effect by the Contracting Parties in accordance with their own rules.
2. The Regional Steering Committee shall consist of a representative and an alternate representative of the Contracting Parties. Participation as an observer shall be open to all interested Member States.
3. The regional Steering Committee shall act by consensus. However, the Regional Steering Committee may decide to lay down a majority voting procedure for certain specific issues.
4. For the purpose of the proper enforcement of this Agreement, the Contracting Parties shall exchange information, inter alia, on new legislation or decisions that are relevant for this Agreement, and, at the request of any Party, shall hold consultations within the Regional Steering Committee, including on social issues.
5. The Regional Steering Committee shall adopt its rules of procedure.
6. A Non-EU contracting Party shall preside in turn over the Regional Steering Committee in accordance with the arrangements to be laid down in its rules of procedure.

7. The chairman of the Regional Steering Committee shall convene its meetings at least twice a year in order to review the general functioning of this Agreement and, whenever circumstances so require, at the request of a Contracting Party. The Regional Steering Committee shall keep under constant review the development of the case law of the Court of Justice. To this end the European Commission shall transmit to the Non-EU contracting Partners all judgements of the Court of Justice relevant for the functioning of this Agreement. The regional Steering Committee shall act within three months so as to preserve the homogeneous interpretation of this Agreement.
8. The Regional Steering Committee may decide to set up any working party that can assist it in carrying out its duties.
9. The Regional Steering Committee shall prepare the work of the Ministerial Council;

ARTICLE 29

1. 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.
2. The decisions of the Regional Steering Committee shall be published in the Official Journals of the European Union and of the Transport Community Partners. Each decision shall state the date of its implementation by the Contracting Parties and any other information likely to concern economic operators.

TECHNICAL COMMITTEES

ARTICLE 30

1. Technical Committees are hereby established which shall be responsible for the follow up of this Agreement for each transport mode and for environment issues and may make proposals to the RSC for decision
2. The Technical Committees shall consist of representatives of the Contracting Parties. Participation as an observer shall be open to all interested Member States.

SOCIAL FORUM

ARTICLE 31

1. For social matters linked with the implementation of this Agreement a Social Forum shall be established in each Non-EU contracting Party.
2.

THE PERMANENT SECRETARIAT

ARTICLE 32

The Permanent Secretariat shall:

- (a) provide administrative support to the Ministerial Council, the Regional Steering Committee, the technical Committees and the Social Forum;
- (b) act as a Transport Observatory to monitor the performance of the Core Network;
- (c) prepare proposal for the modifications of the Core Network as foreseen in Article 6(2).

ARTICLE 33

The Secretariat shall comprise a Director and such staff as the Transport Community may require.

ARTICLE 34

The Director of the Secretariat shall be appointed by the RSC following consultation of the Ministerial Council. The RSC shall lay down rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

ARTICLE 35

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the South East Europe Transport Community.

ARTICLE 36

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Regional Steering Committee, the Technical Committees and the Social Forum.

ARTICLE 37

[Seat of the Secretariat]

BUDGET

ARTICLE 38

Each Party shall contribute to the budget of the Transport Community as set out in Annex VI. The level of contributions may be reviewed every three years, on request of any Party, by a decision of the Regional Steering Committee.

ARTICLE 39

The RSC shall adopt the budget of the Transport Community every year. The budget shall cover the operational expenses of the Transport Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The RSC shall adopt a decision specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

ARTICLE 40

The Director of the Secretariat shall implement the budget and shall report annually to the RSC on the execution of the budget. The RSC may decide, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

DISPUTE SETTLEMENT

ARTICLE 41

1. Any Contracting Party may bring a matter under dispute which concerns the application or interpretation of this Agreement before the relevant Technical Committee, except where specific procedures are set out in this Agreement. In case of dispute as to which Technical Committee has jurisdiction, this shall be decided by the Regional Steering Committee.
2. When a dispute has been brought before the Technical Committee under paragraph 1, immediate consultations shall be held between the parties to the dispute. In cases where the European Community is not a party to the dispute, a Community representative may be invited to the consultations by one of the parties to the dispute. The parties to the dispute may draw up a proposal for a solution which shall immediately be submitted to the Technical Committee. Decisions taken by the Technical Committee under this procedure shall respect the case law of the Court of Justice.
3. If the Regional Steering Committee or the Technical Committee, after four months from the date when the matter was brought before it, has not succeeded to take a decision resolving the dispute, the parties to the dispute may refer it to the Court of Justice whose decision shall be final and binding. The modalities according to which such referrals may be made to the Court of Justice are set out in Annex IV.

DISCLOSURE OF INFORMATION

ARTICLE 42

The representatives, delegates and experts of the Contracting Parties, as well as officials and other servants acting under this Agreement, shall be required, even after their duties have ceased, not to disclose information covered by the obligation of professional confidentiality, in particular information about undertakings, their business relations or their cost components.

THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

ARTICLE 43

1. The Contracting Parties shall consult with each other in the framework of the Regional Steering Committee at the request of any Contracting Party,
 - (a) on transport questions dealt with in international organisations; and
 - (b) on various aspects of possible developments in relations between Contracting Parties and third countries in transport, and on the functioning of the significant elements of bilateral or multilateral agreements concluded in this field.
2. The consultations provided for in paragraph 1 shall be held within one month of the request and in urgent cases as soon as possible.

TRANSITIONAL ARRANGEMENTS

ARTICLE 44

1. Protocols I to VII establish the transitional arrangements and corresponding periods applying between the European Community, on the one hand, and the Non-EU contracting Party concerned, on the other hand. In the relationship between Norway or Iceland and an Non-EU contracting Party the same conditions shall apply as between the European Community, on the one hand, and the Non-EU contracting Party concerned, on the other hand.
2. *[Regime applicable between Non-EU Contracting Parties where the respective regimes have different provisions]*
3. The gradual transition of each Non-EU contracting Party to the full application of the TC shall be subject to assessments. The assessments shall be carried out by the European Commission in cooperation with the Non-EU contracting Party concerned. The Commission may launch an assessment upon its own initiative or on the initiative of the Non-EU Contracting Party concerned.

4. If the European Commission determines that the conditions are fulfilled it shall inform the Regional Steering Committee and decide thereafter that the Non-EU contracting Party concerned qualifies for passing to the next stage of the Transport Community.
5. If the European Commission determines that the conditions are not fulfilled it shall so report to the Regional Steering Committee. The European Commission shall recommend to the Non-EU contracting Party concerned specific improvements.

RELATIONSHIP WITH BILATERAL TRANSPORT AGREEMENTS AND ARRANGEMENTS

ARTICLE 45 *[to be drafted at a later stage]*

ENTRY INTO FORCE, REVIEW, TERMINATION AND OTHER PROVISIONS

ARTICLE 46

Entry into force

1. This Agreement shall be subject to ratification or approval by the signatories in accordance with their own procedures. Instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Union (depository), which shall notify all other signatories.
2. This Agreement shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification or approval by the European Community and at least [one] Non-EU contracting Party. For each signatory which ratifies or approves this agreement after such date, it shall enter into force on the first day of the second month following the deposit by such signatory of its instrument of ratification or approval.

3. Notwithstanding paragraphs 1 and 2, the European Community and at least one Non-EU contracting Party, may decide to apply provisionally this Agreement among themselves from the date of signature, in accordance with the application of domestic law, by notifying the depositary which shall notify the other Contracting Parties thereof.

ARTICLE 47

Review

This Agreement shall be reviewed at the request of any Contracting Party and at any event five years after its entry into force.

ARTICLE 48

Termination

1. Each Contracting Party may denounce this Agreement by notifying the depositary, which shall notify this termination to the other Contracting Parties. If this Agreement is denounced by the European Community it shall cease to be in force one year after the date of notification. If this Agreement is denounced by any other Contracting Party it shall cease to be in force only with respect to such Contracting Party one year after the date of notification.
2. Upon accession to the European Union of a Non-EU contracting Party, that Party shall automatically cease to be a Non-EU contracting Party under this Agreement and shall instead become an EC Member State.

ARTICLE 49

Enlargement of the TC

[to be drafted at a later stage]

ARTICLE 50

Languages

This Agreement is drawn up in a single original in the official languages of the institutions of the European Union and of the Non-EU Contracting Parties, each of these texts being equally authentic.

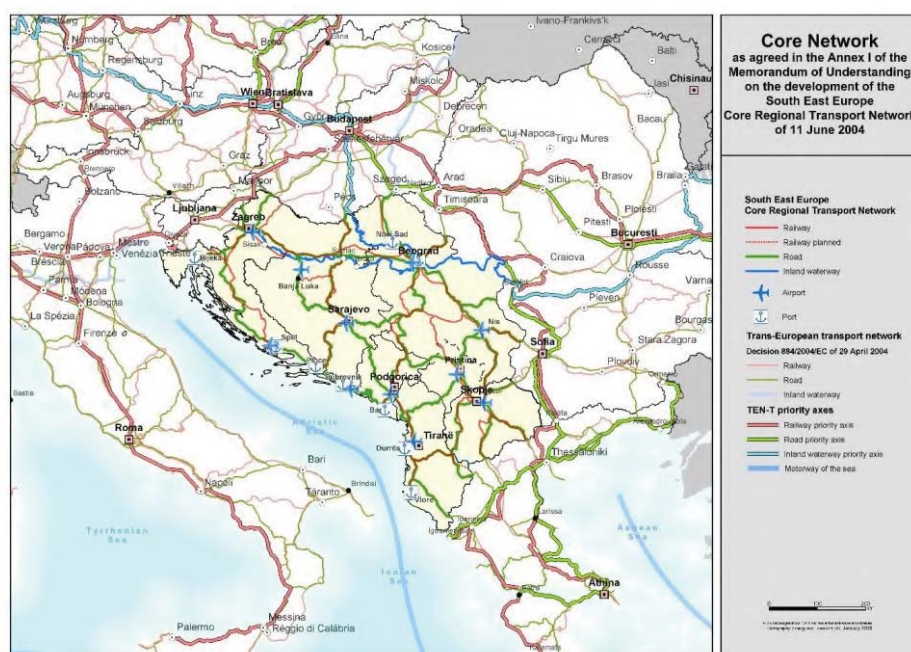
In WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto, have signed this Agreement:

ANNEX I TO ANNEX I

RULES APPLICABLE TO TRANSPORT INFRASTRUCTURE FORMING THE SOUTH EAST EUROPE CORE NETWORK

The "Applicable provisions" of the following European Community acts shall be applicable in accordance with the Main Agreement and Annex II on horizontal adaptations unless otherwise specified in this Annex or in Protocols I to VII thereafter. Where necessary, specific adaptations for each individual act are set out hereafter:

Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network as amended in 2001 and 2004.



RULES APPLICABLE TO RAIL TRANSPORT

The "Applicable provisions" of the following European Community acts shall be applicable in accordance with the Main Agreement and Annex II on horizontal adaptations unless otherwise specified in this Annex or in Protocols I to VII thereafter. Where necessary, specific adaptations for each individual act are set out hereafter:

RULES APPLICABLE TO ROAD TRANSPORT

The "Applicable provisions" of the following European Community acts shall be applicable in accordance with the Main Agreement and Annex II on horizontal adaptations unless otherwise specified in this Annex or in Protocols I to VII thereafter. Where necessary, specific adaptations for each individual act are set out hereafter:

RULES APPLICABLE TO MARITIME TRANSPORT

The "Applicable provisions" of the following European Community acts shall be applicable in accordance with the Main Agreement and Annex II on horizontal adaptations unless otherwise specified in this Annex or in Protocols I to VII thereafter. Where necessary, specific adaptations for each individual act are set out hereafter:

RULES APPLICABLE TO INLAND WATERWAYS TRANSPORT

The "Applicable provisions" of the following European Community acts shall be applicable in accordance with the Main Agreement and Annex II on horizontal adaptations unless otherwise specified in this Annex or in Protocols I to VII thereafter. Where necessary, specific adaptations for each individual act are set out hereafter:

ENVIRONMENT RULES APPLICABLE TO TRANSPORT INFRASTRUCTURE

SOCIAL RULES APPLICABLE TO TRANSPORT SECTOR

PUBLIC PROCUREMENT RULES APPLICABLE TO TRANSPORT SECTOR

ANNEX II TO ANNEX I

Horizontal adaptations and certain procedural rules

The provisions of the acts specified in Annex I shall be applicable in accordance with the Agreement and points 1 to 4 of this Annex, unless otherwise provided in Annex I. The specific adaptations necessary for individual acts are set out in Annex I.

This Agreement shall be applicable in accordance with the procedural rules set out in points 5 and 6 of this Annex.

1. INTRODUCTORY PARTS OF THE ACTS

The preambles of the acts specified are not adapted for the purposes of this Agreement. They are relevant to the extent necessary for the proper interpretation and application, within the framework of this Agreement, of the provisions contained in such acts.

2. SPECIFIC TERMINOLOGY OF THE ACTS

The following terms used by the acts specified in Annex I shall read as follows:

- (a) the term "Community" shall read "European Common Aviation Area";
- (b) the terms "Community law ", "Community legislation", "Community instruments" and "EC Treaty" shall read "TC Agreement";
- (c) the terms "railway infrastructure" shall read "railway infrastructure in the South East Europe Transport Community Area"
- (d) the terms "road infrastructure" shall read "road infrastructure in the South East Europe Transport Community Area"

- (e) the term “airport infrastructure” shall read “airport infrastructure in the South East Europe Transport Community Area
- (f) the terms “inland waterway infrastructure” shall read “inland waterway infrastructure in the South East Europe Transport Community Area”
- (g) the term “Official Journal of the European Communities” or “Official Journal of the European Union” shall read “Official Journals of the Contracting Parties”;

3. REFERENCES TO MEMBER STATES

Without prejudice to point 4 of this Annex, whenever acts specified in Annex I contain references to “Member State(s)”, the references shall be understood to include, apart from the EC Member States, also the EEE Members (Norway, Iceland and Lichtenstein) .

4. PROVISIONS ON EUROPEAN COMMUNITY COMMITTEES AND CONSULTATION OF THE ASSOCIATED PARTIES

Experts of the Associated Parties shall be consulted by the European Commission and given the opportunity to submit their advice each time the acts specified in Annex I provide for the consultation by the European Commission of European Community Committees and for the opportunity to submit their advice or opinion.

Each consultation shall consist of one meeting chaired by the European Commission and shall take place within the Joint Committee at the invitation of the European Commission prior to the consultation of the relevant European Community Committee. The European Commission shall provide each Non-EU contracting Party at least two weeks in advance of the meeting, unless specific circumstances require a shorter notice, with all necessary information.

The Associated Parties shall be invited to submit their views to the European Commission. The European Commission shall take due account of the advice delivered by the Associated Parties.

The above provisions shall not apply on the application of competition rules set out in this Agreement which shall be governed by the specific consultation procedures set out in Annex III.

5. COOPERATION AND EXCHANGE OF INFORMATION

To facilitate the exercise of the relevant powers of the competent authorities of the Contracting Parties, such authorities shall upon request mutually exchange all information necessary for the proper functioning of this Agreement.

6. REFERENCE TO LANGUAGES

The Contracting Parties shall be entitled to use, in the procedures established in the ambit of this Agreement and without prejudice to Annex IV, any official language of the institutions of the European Union or of another Contracting Party. The Contracting Parties are aware, however, that the utilisation of English facilitates those procedures. If a language which is not an official language of the institutions of European Union is used in an official document, a translation into an official language of the institutions of the European Union shall be simultaneously submitted, taking into account the provision of the preceding sentence. If a Contracting Party intends to use, in an oral procedure, a language that is not an official language of the institutions of the European Union, that Contracting Party shall ensure simultaneous interpretation into English.

ANNEX III TO ANNEX I

Rules on competition and state aid referred to in Article of the Main Agreement

Article 1 State monopolies

An Non-EU contracting Party shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the second period referred to in the Protocol to this Agreement which contains the transitional measures with regard to the Non-EU contracting Party concerned, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Contracting Parties. The Regional Steering Committee shall be informed of the measures adopted to attain this objective.

Article 2 Approximation of state aid and competition legislation

1. The Contracting Parties recognise the importance of the approximation of the existing legislation on State aid and competition of the Associated Parties to that of the European Community. The Associated Parties shall endeavour to ensure that their existing and future laws on state aid and competition are gradually made compatible with the European Community *acquis*.
2. This approximation shall start upon the entry into force of this Agreement, and shall gradually extend to all the elements of the European Community state aid and competition provisions referred to in this Annex by the end of the second period referred to in the Protocol to this Agreement which contains the transitional measures with regard to the Non-EU contracting Party concerned. The Non-EU contracting Party shall also define, in agreement with the European Commission, the modalities for the monitoring of the implementation of the approximation of legislation and law enforcement actions to be taken.

Article 3

Competition rules and other economic provisions

1. The following practices are incompatible with the proper functioning of this Agreement, insofar as they may affect trade between two or more Contracting Parties:
 - (i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
 - (ii) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;
 - (iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.
2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the European Community, in particular from Articles 81, 82, 86 and 87 of the EC Treaty and interpretative instruments adopted by the European Community institutions.
3. Each Non-EU contracting Party shall ensure that an operationally independent public body is entrusted with the powers necessary for the full application of paragraph 1 (i) and (ii), regarding private and public undertakings and undertakings to which special rights have been granted.
4. Each Non-EU contracting Party shall designate or establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1 (iii). This authority shall have, *inter alia*, the powers to authorise State aid schemes and individual aid grants in conformity with paragraph 2, as well as the powers to order the recovery of State aid that has been unlawfully granted.

5. Each Contracting Party shall ensure transparency in the area of State aid, *inter alia*, by providing the other Contracting Parties with a regular annual report or equivalent, following the methodology and the presentation of the European Community survey on State aid. Upon request by a Contracting Party, another Contracting Party shall provide information on particular individual cases of public aid.
6. Each Non-EU contracting Party shall establish a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 4 and shall align such aid schemes with the criteria referred to in paragraph 2.
7. (a) For the purposes of applying the provisions of paragraph 1(iii), the Contracting Parties recognise that during the periods referred to in the Protocol to this Agreement which contains the transitional measures with regard to an Non-EU contracting Party, any public aid granted by this Non-EU contracting Party shall be assessed taking into account that the Non-EU contracting Party concerned is to be regarded as an area identical to those areas of the European Community described in Article 87(3)(a) of the Treaty establishing the European Community;
- (b) By the end of the first period referred to in the Protocol to this Agreement which contains the transitional measures with regard to an Non-EU contracting Party, this Party shall submit to the European Commission its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the European Commission shall then jointly evaluate the eligibility of the regions of the Non-EU contracting Party concerned as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant European Community guidelines.
8. If one of the Contracting Parties considers that a particular practice is incompatible with the terms of paragraph 1, it may take appropriate measures after consultation within the Joint Committee or after thirty working days following referral for such consultation.
9. The Contracting Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business confidentiality.

ANNEX IV TO ANNEX I

Referrals to the Court of Justice of the European Communities

1. General principles relating to Article 16 of the Agreement

1. The procedures established by the Court of Justice of the European Communities, hereinafter referred to as "the Court of Justice", for referrals for preliminary rulings within the European Community shall apply, as far as appropriate. Further to the preliminary ruling, a court or tribunal of a Contracting Party shall apply the interpretation ruled by the Court of Justice.
2. Contracting Parties shall have, within the ambit of this Agreement, the same rights to submit observations to the Court of Justice as the EC Member States.

2. Extent and modalities of the procedure established in Article [Interpretation]

1. When, in accordance with the second sentence of Article [Interpretation], a Contracting Party adopts a decision on the extent and modalities of referrals to the Court of Justice, that decision shall specify that either:
 - (a) any court or tribunal of the Contracting Party against whose decisions there is no judicial remedy under national law shall request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in Article [Interpretation] if that court or tribunal considers that a decision on the question is necessary to enable it to give a judgment, or
 - (b) any court or tribunal of that Contracting Party may request the Court of Justice to give a preliminary ruling on a question raised before it and concerning the validity or interpretation of an act referred to in Article [Interpretation] if that court or tribunal considers that a decision on the question is necessary to enable it to give a judgment.

2. The modalities of application of Article [Interpretation] shall be based on the principles enshrined in the legal provisions governing the functioning of the Court of Justice, including the relevant provisions of the EC Treaty, the Statute and the Rules of Procedure of the Court of Justice, as well as the case law of the latter. In the event that it takes a decision on the modalities of application of this provision, the Contracting Party shall also take into consideration the practical guidance released by the Court of Justice in the Information Notice on references by national courts for preliminary rulings.

3. Referrals according to Article [Dispute Settlement] of the Agreement

The Court of Justice shall treat disputes submitted to it in accordance with Article [Dispute Settlement] in the same manner as those submitted to it in accordance with Article 239 of the EC Treaty.

4. Referrals to the Court of Justice and languages

The Contracting Parties shall be entitled to use, in the procedures before the Court of Justice established in the ambit of the Agreement, any official language of the institutions of the European Union or of another Contracting Party. If a language which is not an official language of the institutions of the European Union is used in an official document, a translation into French shall be simultaneously submitted. If a Contracting Party intends to use, in an oral procedure, a language that is not an official language of the institutions of the European Union, the Contracting Party shall ensure simultaneous interpretation into French.

PROTOCOL I

TRANSITIONAL ARRANGEMENTS BETWEEN
THE EUROPEAN COMMUNITY AND
THE EC MEMBER STATES, OF ONE PART,
AND THE REPUBLIC OF ALBANIA, OF THE OTHER PART
(Draft example)

I. Conditions relating to transition for rail transport

Article 1

1. The first transitional period shall extend from the entry into force of this Agreement until all conditions set out in Article 2(1) of this Protocol have been fulfilled by the Republic of Albania, hereinafter referred to as "Albania", as verified by an assessment carried out by the European Community.
2. The second transitional period shall extend from the end of the first transitional period until all conditions set out in Article 2(2) of this Protocol have been fulfilled by Albania as verified by an assessment carried out by the European Community.

Article 2

1. By the end of the first transitional period Albania shall
 - (i) endeavour to implement all railway legislation as provided in Annex I;
 - (ii) have made sufficient progress in implementing the rules on state aid and competition included in an agreement referred to in Article 14(1) of the Main Agreement or in Annex III, whichever is applicable.

2. By the end of the second transitional period Albania shall apply this Agreement including all legislation set out in Annex I.

Article 3

Transitional arrangements

1. Notwithstanding Article 1(1) of the Main Agreement,
 - (i) During the first transitional period railway undertakings licensed by Albania shall be granted access to railway infrastructure in Albania;
 - (ii) During the second transitional period railway undertakings licensed by Albania shall be permitted to exercise the traffic rights provided for in paragraph (1)(i) and to railway infrastructure of any other Associated Partner that has passed to the second transitional period;

For the purpose of this Article, "Community railway undertaking" shall mean a railway undertaking licensed by an EC Member State, Norway or Iceland.

II. Conditions relating to transition for road transport

III. Conditions relating to transition for maritime transport

PROTOCOL II- VII

To be completed for each one of the seven Non-EU contracting Party similar to Protocol I

ANNEX VI TO ANNEX I

BUDGET OF THE SOUTH EAST EUROPE TRANSPORT COMMUNITY



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT

ANNEX II

Explanatory note

Draft text
on the treaty establishing a Transport Community with
the Western Balkan Region

Second Regional Meeting – Brussels – 18 November 2008

Context

The Transport Community Treaty with the Western Balkan region is expressly designed to integrate the region fully into the European Transport family and to complement the Enlargement policy of the Community.

The agreement is based on the Community *acquis* in transport as regards infrastructure development, market opening, technical interoperability, safety, environment and social legislation.

The final agreement, as well as decisions taken pursuant to its implementation, should be without prejudice to negotiations conducted in the framework of enlargement of the EU. This means that for candidate countries – both current and future – the negotiations on the Chapters 14 "Transport Policy" and 21 "Trans-European Networks" will still need to be conducted in the framework of the accession negotiations.

As soon as the accession treaty of a candidate country enters into force, that Party shall automatically cease to be a Non EU Contracting Party under the Transport Community Treaty and shall instead become an EU Member State.

Draft Treaty

The draft treaty is still at a very early stage of drafting and remains, as announced, incomplete. The EC together with the partners will, over the next months, progressively complete the draft. Our aim remains that of agreeing a final text before or immediately after the 2009 summer break. Then, after procedure endorsement by all partners, the signature of the treaty could take place before the end of 2009. The schedule remains ambitious but achievable with the full commitment of all.

The draft treaty is in many respects based on the text of the agreement on the European Common Aviation Area (ECAA). This agreement, in force since 2006, envisages the extension of the internal market in air transport. The Transport Community Treaty aims at similar goals for road, rail, inland waterways and maritime transport. Since aviation is covered by ECAA, it will therefore not be covered by the Transport Community Treaty. In addition, the Transport Community Treaty will also cover infrastructure in all transport modes and will take into account the relevant *acquis* linked with transport in the field of environment, public procurement and social rules.

This draft text consists of a common main part, the "Main Agreement" which includes a number of Articles setting out the general functioning of the Transport Community and of annexes, of which Annex I contains the list of the European Community legislation applicable between the Contracting Parties in the framework of the Main Agreement, and of Protocols, one for each Non-EU contracting Party, which establish the transitional arrangements applicable to that Party.

The Protocols will detail by partner and by domain of the treaty (infrastructure, road, rail, inland waterways and maritime transport as well as environment, social rules, procurement) the conditions and timetable periods for moving through the 3 steps envisaged by the Treaty. These three steps are:

1. National integration of the transport market
2. Regional integration of the transport market
3. Full integration with the EU transport market

The protocols will focus on when the Community *acquis* in the relevant and/or related fields of the transport sector will be fully applicable and enforced. The protocols will cover all aspects of the *acquis* according to a stepwise approach:

- Internal market rules
- Technical standards
- Interoperability
- Safety
- Security
- Environment

- Social law
- Procurement rules

NEXT STEPS OF THE NEGOTIATION

Due to the complexity of the negotiations, which take place in a regional context with seven partners, on four transport modes plus infrastructure and border facilitation issues, including also aspects of environment, social rules and public procurement *acquis*, it is suggested to split the discussions into several layers in order to facilitate the finalisation of the Agreement. Therefore, the following methodology is proposed:

1. Bilateral visits to all the seven partners
2. Multi-lateral meeting by transport mode/issue, five in total
3. Regional Meeting(s)

The bilateral visits carried out during autumn 2008 to each of the partners have been very useful. The second round of bilateral meetings would have the following objectives:

1. To discuss issues related to environment, social and procurement;
2. To discuss drafts Protocols for each partner.

Subsequently, multi-lateral meetings by transport mode (road, rail, IWW and maritime transport) as well as to finalise the Core Network, should be held in Brussels.

Schedule until Summer 2009

February/March 2009: Visits of DG Energy and Transport to each partner (2 day visits)

April/May 2009 Multi-lateral meetings by transport issue in Brussels

Mid-June 2009: Third Regional meeting – Brussels

Mid-July: Final Regional meeting – Brussels (if needed)

Conclusion of the negotiations

It is foreseen that the negotiations should be completed by the end of the Swedish EU Presidency in the second half of 2009
