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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 November 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 693 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Regional Steering Committee of the Transport Community as regards the introduction of a common set of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community

Delegations will find attached document COM(2023) 693 final.

Encl.: COM(2023) 693 final



EUROPEAN
COMMISSION

Brussels, 8.11.2023
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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union
in the Regional Steering Committee of the Transport Community as regards the
introduction of a common set of rules on the reimbursement of expenses incurred by
persons from outside the Permanent Secretariat of the Transport Community who are
invited to participate in meetings of 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') with regard to the introduction of a common set of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community (the 'Permanent Secretariat') who are invited to participate in meetings of the Transport Community.

In essence, the proposed change to the rules will increase the number of supported participants per delegating institution from one to two for certain events focused on capacity building, as well as introduce a daily subsistence allowance equivalent to the one applicable to TCT staff. The envisaged Regional Steering Committee decision will therefore introduce a common set of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community. This decision will replace the rules adopted pursuant to the Regional Steering Committee Decisions No. 2020/5¹ and 2021/02².

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, having adopted on 4 March 2019 a Council Decision on the conclusion of the Treaty establishing the Transport Community³. The TCT 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 makes recommendations and takes 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,

¹ On the rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to attend meetings in an expert capacity

² On the rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community

* 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.

³ 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).

- (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,
- (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 is open to all EU Member States. The Regional Steering Committee acts by unanimity.

2.3 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% are provided by the South East European Parties.

On 15 December 2022, the Regional Steering Committee of the Transport Community adopted revised financial rules and auditing procedures applicable to the Transport Community.

The financial rules enable the Director of the Permanent Secretariat to 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

Some of the South East European Parties have previously underlined difficulties to participate in different TCT events and official meetings due to government restrictions on travel costs. This has in many instances resulted in an inability to ensure physical presence in meetings. In addition, the institutional structure and allocation of responsibilities within some of the South

East European Parties sometimes necessitate the participation of more than one representative per delegating institution.

Government restrictions on travel costs within the South East European Parties have also led to significant additional administrative burden for the Permanent Secretariat, with the majority of South East European Parties participating in events requesting exception and prepayment of participations, resulting in travel and accommodation being prearranged by the Permanent Secretariat.

The envisaged changes to the currently applicable reimbursement rules include a proposal to increase the number of supported participants per delegating institution from one to two for certain events focused on capacity building, as well as the harmonisation of rules applicable to external experts and to participants from the South East European Parties, including the introduction of a daily subsistence allowance equivalent to the one applicable to TCT staff. The introduction of a daily subsistence allowance is also expected to reduce the administrative burden for the Permanent Secretariat, which would no longer need to pre-book travel arrangements and/or accommodation on behalf of the participants from the South East European Parties.

The adoption of the envisaged decision by the Regional Steering Committee is therefore necessary for the implementation of the TCT and for the proper functioning of the Permanent Secretariat and of the bodies of the Transport Community. As the Union is a party to the TCT, it is necessary to establish a Union position on the envisaged decision.

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 TCT⁴.

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*'⁵.

4.1.2 Application to the present case

The Regional Steering Committee is a body set up by an agreement, namely the TCT.

⁴ COM(2017)324 final, sub "General Context".

⁵ 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.

The act which the Regional Steering Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 25(1) of the TCT. This is because, in accordance with Article 35 of the TCT, the Regional Steering Committee is empowered to adopt a decision specifying the procedure for the implementation of the budget. Pursuant to Article 25(1) of the TCT, a decision of the Regional Steering Committee shall be binding upon the Contracting Parties.

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) TFEU 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 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 their horizontal nature, the envisaged acts pertain 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.

4.4. Publication of the envisaged act

In accordance with Article 25(2) of the TCT, the decisions of the Regional Steering Committee shall be published in the Official Journal of the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 and Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The TCT has been approved on behalf of the Union on 4 March 2019⁶ and entered into force on 1 May 2019.
- (2) The Regional Steering Committee was established by the TCT for the administration and the proper implementation of the TCT. Pursuant to Article 35 of the TCT, the Regional Steering Committee may adopt decisions specifying the procedure for the implementation of the budget.
- (3) The Regional Steering Committee is expected to adopt a decision on the introduction of a common set of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community. This decision will replace the rules adopted pursuant to the Regional Steering Committee Decisions No. 2020/5⁷ and 2021/02⁸.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Regional Steering Committee, as the envisaged decision will be binding on the Union.

⁶ 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).

⁷ On the rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to attend meetings in an expert capacity

⁸ On the rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community

- (5) As such a decision is necessary for the good functioning of the Permanent Secretariat of the Transport Community and of the bodies of the Transport Community, it is appropriate to establish the position to be taken on behalf of the Union in the Regional Steering Committee with regard to its adoption.

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 regarding the decision on the introduction of a common set of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the Transport Community who are invited to participate in meetings of the Transport Community, which will replace the rules adopted pursuant to Decision No. 2020/5 and to Decision No. 2021/02 of 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 in the Regional Steering Committee without further decision by the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President