EUROPEAN
COMMISSION

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2024/0257 (NLE)

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 changes to the rules on maternity leave of the Transport Community Permanent Secretariat

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 changes to the rules on maternity leave applicable to the staff members of the Transport Community Permanent Secretariat.

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*, Montenegro and the Republic of Serbia (hereinafter referred to as 'the South East European Parties') 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 Community[1]. 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,

(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,

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

1 Council Decision (EU) 2019/392 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Treaty establishing the Transport Community (OJ L 71, 13.3.2019, p. 1).

(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, and

(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 The envisaged act of the Regional Steering Committee

The draft Council decision relates to the adoption of a decision by the Regional Steering Committee on the revision of the rules on maternity leave for the staff members of the Transport Community Permanent Secretariat.

The currently applicable rules on maternity leave for the staff members of the Transport Community Permanent Secretariat are set out in Article 10.4 of the Staff Regulations of the Transport Community (adopted pursuant to Annex II of Decision No. 2019/3 of the Regional Steering Committee of 5 June 2019). The envisaged amendment notably includes a proposal to raise the number of weeks of paid maternity leave for the staff members of the Transport Community Permanent Secretariat from 16 to 20 weeks.

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

The Transport Community Permanent Secretariat has previously underlined that the currently applicable number of weeks of paid maternity leave for female staff members of the Transport Community Permanent Secretariat is significantly below the minimum number of weeks female staff members are entitled to in the South East European Parties. Moreover, the Transport Community Permanent Secretariat underlined that the currently applicable rules pose problems for staff members with newborn children, given that there are few childcare facilities in Belgrade accepting children younger than six months.

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. 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 should 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[2].

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*

[2] COM(2017)324 final, sub "General Context".

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*'[3].

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 is an act having legal effects. In accordance with Article 30 of the TCT, the Regional Steering Committee is empowered to lay down rules of the Permanent Secretariat, in particular for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. Moreover, under Article 24(1) of the TCT, the Regional Steering Committee is tasked with the administration of the Treaty and with ensuring its proper implementation.

By their nature, and as a matter of international law governing the Regional Steering Committee, the envisaged rules contain elements that affect the legal position of the parties to the TCT and therefore also of the Union. Consequently, they must be considered as having legal effects.

The envisaged 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.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Articles 91 and 100(2) TFEU.

[3] 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.

4.3 Conclusion

The legal basis of the proposed decision should be Articles 91 and 100(2) TFEU, in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Treaty establishing the Transport Community ('the TCT') was signed by the Union in accordance with Council Decision (EU) 2017/1937[4].

(2) The TCT has been approved on behalf of the Union on 4 March 2019[5] and entered into force on 1 May 2019.

(3) The Regional Steering Committee was established by the TCT for the administration and the proper implementation of the TCT.

(4) Pursuant to Article 30 of the TCT, the Regional Steering Committee is competent to adopt decisions on detailed rules of the Permanent Secretariat, in particular for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff.

(5) The Regional Steering Committee envisages to adopt a decision on an amendment to Annex II, 'Staff Regulations of the Transport Community', to its Decision No. 2019/3, as regards the rules on the maternity leave of the staff members of the Permanent Secretariat of the Transport Community.

(6) It is appropriate to establish the position to be taken on behalf of the Union in the Regional Steering Committee with regard to the adoption of the abovementioned decision, as it is necessary for the proper functioning of the Permanent Secretariat.

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 amendment of Annex II, 'Staff Regulations of the

[4] 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).

[5] 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).

Transport Community', to its Decision No 2019/3, concerning the rules on maternity leave of the Transport Community Permanent Secretariat, 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