EUROPEAN
COMMISSION

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2021/0096 (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 certain administrative and staff matters of the Transport Community

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a 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') in connection with the envisaged adoption by the Regional Steering Committee of decisions on a number of administrative matters: 1) 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, 2) reimbursement of staff of the Permanent Secretariat of the Transport Community for travel and relocation costs upon taking up duties and termination of service, and 3) Transport Community contribution to the health, unemployment, pension and disability insurance for staff of the Permanent Secretariat of the Transport Community.

2. CONTEXT OF THE PROPOSAL

2.1. The Treaty establishing the Transport Community

The European Union is a party to the TCT, which has been applied provisionally since 2017 and has entered into force on 1 May 2019[1].

2.2. The Regional Steering Committee

The Regional Steering Committee is established by Article 24 of the TCT. It is responsible for the administration of the TCT and for ensuring 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 Transport Community,

(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,

[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

(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.

2.3. The envisaged acts of the Regional Steering Committee

The Regional Steering Committee is to adopt decisions on 1) 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, 2) reimbursement of staff of the Permanent Secretariat of the Transport Community for travel and relocation costs upon taking up duties and termination of service, and 3) Transport Community contribution to the health, unemployment, pension and disability insurance for staff of the Permanent Secretariat of the Transport Community.

The envisaged decisions will become legally binding on the parties in accordance with Article 25(1) of the TCT.

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

The adoption of these decisions by the Regional Steering Committee is necessary for the implementation of the TCT and for the proper management of the Permanent Secretariat. As the Union is a party to the TCT, it is necessary to establish a Union position.

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 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*'[2].

4.1.2. Application to the present case

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

The acts which the Regional Steering Committee is called upon to adopt constitute acts 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 notably for the working conditions of the Secretariat's staff. Under Article 35 of the TCT, the Regional Steering Committee is empowered to adopt decisions specifying the procedure for the implementation of the budget. By their nature, and as a matter of international law governing the Regional Steering Committee, those 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.

[2] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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 its horizontal nature, the envisaged act 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.

5. 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 Treaty establishing the Transport Community ('TCT') was concluded by the Union by Council Decision (EU) 2019/392[3] and entered into force on 1 May 2019.

(2) In accordance with Article 24 of the TCT, the Regional Steering Committee was established for the administration and the proper implementation of the TCT. Pursuant to Articles 30 and 35 of the TCT, the Regional Steering Committee is to adopt rules on the working conditions of the staff of the Permanent Secretariat of the Transport Community, and on the implementation of the budget.

(3) The Regional Steering Committee, during its meeting in May 2021, is to adopt decisions 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; the reimbursement of staff of the Permanent Secretariat of the Transport Community for travel and relocation costs upon taking up duties and termination of service; and the contribution of the Transport Community to the health, unemployment, pension and disability insurance for staff of the Permanent Secretariat of the Transport Community. Should these matters not be dealt with during that meeting, the adoption of those decisions will be scheduled for the subsequent meeting.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Regional Steering Committee, as such decisions are necessary for the good functioning of the Permanent Secretariat of the Transport Community and will be binding upon the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Regional Steering Committee set up by the Treaty establishing the Transport Community as regards the adoption of rules on the reimbursement of expenses incurred by persons from outside the Permanent Secretariat of the

[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.

Transport Community, who are invited to participate in meetings of the Transport Community; the reimbursement of staff of the Permanent Secretariat of the Transport Community for travel and relocation costs upon taking up duties and termination of service; and the contribution of the Transport Community to the health, unemployment, pension and disability insurance for staff of the Permanent Secretariat of the Transport Community shall be based on the corresponding draft decisions of the Regional Steering Committee attached to this Decision.

Minor changes to those draft decisions may be agreed to by the representatives of the Union within the Regional Steering Committee without a further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President