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COMMISSION

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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 certain changes to the rules on the procurement of goods and services applicable to 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 applicable to the Transport Community Permanent Secretariat when procuring goods, works or services on its own account below the threshold set out in Directive 2014/24/EU of the European Parliament and of the Council¹.

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') have 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 Community². 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. 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) as regards newly adopted EU acts, takes appropriate action, notably through the revision of Annex I to the TCT,
- (d) appoints the Director of the Permanent Secretariat after consulting the Ministerial Council,
- (e) may appoint one or more Deputy Directors of the Permanent Secretariat,
- (f) lays down rules of the Permanent Secretariat,
- (g) may review, by way of a decision, the level of budget contributions,
- (h) adopts the annual budget of the TCT,

¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: <http://data.europa.eu/eli/dir/2014/24/2024-01-01>)

* 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.

² 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), ELI: <http://data.europa.eu/eli/dec/2019/392/oj>).

- (i) adopts a decision specifying the procedure for the implementation of the budget, for presenting and auditing accounts and for inspection,
- (j) takes decisions on disputes brought by the Contracting Parties,
- (k) adopts general principles in the area of access to documents, in respect of documents held by bodies established by, or under, the TCT,
- (l) adopts annual reports to the attention of the Ministerial Council on the implementation of the Comprehensive Network, and
- (m) in respect of certain Union acts, establishes time limits and ways for the transposition by the South East European Parties.

The Regional Steering Committee is composed of a representative, and an alternate representative, of each of the Contracting Parties. Participation as observers is open to all EU Member States. The Regional Steering Committee acts by unanimity.

2.3. The envisaged act of the Regional Steering Committee

During its last session of 2025, the Regional Steering Committee is to adopt a decision amending the rules that apply to the Permanent Secretariat of the Transport Community when procuring goods, works or services on its own account below the threshold set out in Directive 2014/24/EU of the European Parliament and of the Council, laid down in the Annex to the Financial Rules and Auditing Procedures applicable to the Transport Community³ ('the envisaged act').

The purpose of the envisaged act is to simplify the procurement process for certain contracts with a value not exceeding EUR 20.000 (excluding VAT). Furthermore, the envisaged act introduces an article stipulating that, in any instances where the rules on procurement applicable to the Transport Community Permanent Secretariat lack explicit provisions, Directive 2014/24/EU applies.

The envisaged act will become binding on the parties in accordance with Article 25(1) of the TCT, which provides: 'A decision of the Regional Steering Committee shall be binding upon the Contracting Parties (...)'.

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

The Transport Community Permanent Secretariat has emphasized that the current rules governing the procurement by the Permanent Secretariat of simple and low-value goods and services often pose a challenge in attracting sufficient bidder interest in the procurement process. This concerns goods and services where the precise volume and timing of delivery can be defined at the outset, including but not limited to venue hire, restaurant services, translation, equipment rental and purchase of items. To date, for these kinds of procedures, the Permanent Secretariat develops the whole set of procurement documents as described in the Annex to the Financial Rules and Auditing Procedures applicable to the Transport Community, including the invitation to tender, full tender specifications, and draft contracts. This usually results in receiving only one or no offers.

³ Adopted pursuant to Decision No 2022/02 of the Regional Steering Committee of the Transport Community of 15 December 2022.

Furthermore, in cases where the Annex to the Financial Rules and Auditing Procedures applicable to the Transport Community lacks explicit provisions, a clear legal basis is required to ensure consistency with EU public procurement standards.

The adoption of the envisaged act 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 act.

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’*⁴.

4.1.2. Application to the present case

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

The Regional Steering Committee is empowered to lay down rules of the Permanent Secretariat in accordance with Article 30 of the TCT. Moreover, under Article 24(1) of the TCT, the Regional Steering Committee is tasked with the administration of this Treaty and with ensuring its proper implementation. Lastly, under Article 35 of the TCT, the Regional Steering Committee is empowered to adopt the budget and the related financial governing rules. Pursuant to Article 25(1) of the TCT, decisions of the Regional Steering Committee shall be binding on the Contracting Parties. Consequently, the act which the Regional Steering Committee is called upon to adopt constitutes an act having legal effects.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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.

⁴ 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.

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. All these elements are inseparably linked without one being incidental to the other.

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 Treaty establishing the Transport Community, 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 ('the TCT') was approved on behalf of the Union by means of Council Decision (EU) 2019/392⁵. It 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.
- (3) Pursuant to Article 30 of the TCT, the Regional Steering Committee is competent to adopt decisions on rules of the Permanent Secretariat. Moreover, under Article 35 of the TCT, the Regional Steering Committee is empowered to adopt the budget and the related financial governing rules.
- (4) The Regional Steering Committee, during its last meeting of 2025, envisages to adopt a decision amending the rules that apply to the Permanent Secretariat of the Transport Community when procuring goods, works or services on its own account, laid down in the Annex to the Financial Rules and Auditing Procedures applicable to the Transport Community.
- (5) The envisaged act of the Regional Steering Committee will have legal effects.
- (6) It is therefore necessary 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.
- (7) Support to the adoption of the draft decision attached to this Decision is justified, as it will simplify the current rules governing the procurement by the Permanent Secretariat of low-value goods and services, which is necessary for the continued proper functioning of the Permanent Secretariat.

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, ELI: <http://data.europa.eu/eli/dec/2019/392/oj>).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the last meeting of 2025 of the Regional Steering Committee of the Transport Community regarding the amendment of the rules that apply to the Permanent Secretariat of the Transport Community when procuring goods, works or services on its own account, laid down in the Annex to the Financial Rules and Auditing Procedures applicable to the Transport Community, shall be based on the draft decision of the Regional Steering Committee attached to this Decision.

Article 2

Minor technical changes to the position set out in Article 1 may be agreed upon without further decision by the Council.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President