



EUROPEAN
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 staff salaries 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 certain planned changes to the rules on staff salaries 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 ('the South East European Parties') 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 Community¹. The TCT entered into force on 1 May 2019.

2.2. The Regional Steering Committee

The Regional Steering Committee was 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 Union acts, takes appropriate action, notably by revising 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 the 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 decisions laying down the procedures for implementing the budget, for presenting and auditing accounts, and for carrying out inspections;
- (k) takes decisions on disputes brought by the Contracting Parties;

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

(l) adopts general principles on accessing documents held by bodies established by, or under, the TCT;

(m) adopts annual reports on implementing the Comprehensive Network for the attention of the Ministerial Council;

(n) establishes time limits and ways for the South East European Parties to transpose certain Union acts.

The Regional Steering Committee consists of one representative and one alternate representative of each Contracting Party. Any EU Member State may participate as an observer. The Regional Steering Committee acts by unanimity.

2.3. The planned act of the Regional Steering Committee

Through a written adoption procedure planned for January 2026, the Regional Steering Committee is to adopt a decision amending the rules on staff salaries of the Transport Community Permanent Secretariat ('the planned act'). Those rules are laid down in the Staff Regulations of the Transport Community².

The purpose of the planned act is to apply a one-time salary adjustment of +20% to the salary grid for the staff of the Permanent Secretariat upon the date of application of the decision. The grid is set out in Annex II to Decision No 2019/3 of the Regional Steering Committee of 5 June 2019, which lays down the Staff Regulations of the Transport Community. Furthermore, the planned act aims to update the salaries of the staff of the Permanent Secretariat, which are based on the salary grid, accordingly. It also seeks to introduce, as of 1 January 2027, a mechanism for the annual indexation of the staff salaries of the Permanent Secretariat, in accordance with the annual Consumer Price Index (CPI), as published by the relevant statistical authority of the Republic of Serbia.

Preliminary discussions among the Contracting Parties on the planned act envisaged that salary indexation would apply from 1 January 2026. However, delays in reaching agreement on a proposal to be submitted for potential adoption mean that the written adoption procedure of the Regional Steering Committee can only be launched in January 2026. Nevertheless, in order to remain consistent with the preliminary discussions, and to ensure that the annual salary indexation aligns with the annual adoption cycle of the Transport Community budget, it is appropriate to provide for the retroactive application of the envisaged decision as of 1 January 2026.

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

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

Annex II to Decision No 2019/3 of the Regional Steering Committee sets out the Staff Regulations of the Transport Community. It states in Section 9.1 that the salary scale corresponding to the classification of posts in the Permanent Secretariat, which is provided in the Appendix to those Staff Regulations, is to be regularly reviewed by the Regional Steering Committee. This is to ensure that salaries remain competitive and in line with the requirements of the Secretariat. However, the Staff Regulations do not set out a mechanism for annually adjusting staff salaries in line with inflation. As a result, the salary grid has

² Adopted pursuant to Annex II to Decision No 2019/3 of the Regional Steering Committee of 5 June 2019.

remained unchanged since its adoption in June 2019. This has substantially eroded the purchasing power of the staff of the Permanent Secretariat.

As a result, the Permanent Secretariat has emphasised that the competitiveness of the salary scale has significantly declined. This has already contributed to a noticeable decrease in the number of applications for open positions, as well as increased staff turnover.

The Regional Steering Committee therefore needs to adopt the planned act to ensure that the salary grid of the Permanent Secretariat remains competitive, and thus to ensure 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 planned 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 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’*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 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 that Treaty and 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 are 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 planned 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 planned act in respect of which a position is taken on the Union’s behalf. If the planned 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.

³ 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 a planned 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 planned act is necessary for the proper functioning of the TCT. 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 planned act pertains to all these aspects.

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 PLANNED ACT

In accordance with Article 25(2) of the TCT, the decisions of the Regional Steering Committee are to 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) 2019/392⁴ and entered into force on 1 May 2019.
- (2) The Regional Steering Committee was established by the TCT for the administration and proper implementation of the TCT.
- (3) Pursuant to Article 30 of the TCT, the Regional Steering Committee is empowered to adopt decisions on the rules of the Permanent Secretariat. 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. Lastly, 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, through a written adoption procedure planned for January 2026, plans to adopt a decision amending the rules on staff salaries of the Transport Community Permanent Secretariat, which are laid down in the Staff Regulations of the Transport Community.
- (5) In order to remain consistent with preliminary discussions among the Contracting Parties on the planned act, and to ensure that the annual salary indexation aligns with the annual adoption cycle of the Transport Community budget, it is appropriate to provide for the retroactive application of the envisaged decision as of 1 January 2026.
- (6) The planned act of the Regional Steering Committee will have legal effects.
- (7) It is therefore necessary to establish the position to be taken on behalf of the Union in the Regional Steering Committee with regard to adopting the above-mentioned decision.
- (8) Supporting the adoption of the draft decision attached to this Decision is justified, as it will ensure that the salaries of the staff members of the Permanent Secretariat remain

⁴ 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>).

competitive, which is necessary for the continued proper functioning of the Permanent Secretariat,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the written adoption procedure of the Transport Community's Regional Steering Committee, planned for January 2026, as regards amending the rules on staff salaries of the Transport Community Permanent Secretariat, laid down in the Staff Regulations of 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*