



Brussels, 9.6.2017
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2017/0132 (NLE)

Proposal for a

COUNCIL DECISION

**on the signing, on behalf of the European Union, and provisional application of the
Transport Community Treaty**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

A well-functioning transport system connecting the Union and the neighbouring countries is essential for sustainable economic growth and the wellbeing of all citizens. Transport cooperation with the Western Balkans countries is currently governed by a South East European Transport Observatory, a Memorandum of Understanding (MoU) of 11 June 2004 by the Governments of Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia and the United Nations Mission in Kosovo and the European Commission which main objective was to extend the TEN-T network and related policies to the South East European countries.

The MoU has, however, shown limits and following an assessment made by the Commission in 2008, a more comprehensive cooperation approach – involving other transport policies and transport related areas – has been suggested. In this context, based on the positive experience of the Energy Community, the Commission proposed to take inspiration from this example for the purposes of the transport sector and thus to come to an agreement ensuring that legislation, standards and technical specifications of our main regional partners in question are compatible with those of the Union.

The Council authorised the Commission on 12 June 2008 and on 9 October 2009 to open negotiations on behalf of the European Union with Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo*, Montenegro and Serbia, on a Treaty establishing a Transport Community.

The discussions at technical level were successfully completed in July 2010. However, due to the impossibility to agree on the appropriate designation of one of the parties, namely Kosovo, the finalisation of the Transport Community Treaty remained stalled for almost three years. The discussions were resumed in 2013 and an agreement on the final version of the Treaty was reached in 2016. The agreement should then now be signed on behalf of the European Union and by the other parties.

The Treaty sets up a Ministerial Council which shall ensure that the objectives set out in this Treaty are attained. The EU position to be taken at the Ministerial Council when adopting acts having legal effects will be based on the specific EU procedure in particular Article 218(9) TFEU.

The text of the agreement that has been initialled left empty Article 33 relating to the Seat of the Permanent Secretariat since at that moment it was not possible to establish the location. In such circumstances, the text presented for the signature has been slightly modified in order to allow the Ministerial Committee to adopt such decision by the agreement of the Parties.

However, it is not excluded that in the margins of the West-Balkans 6 Summit that will take place in Trieste on 12 July 2017 a political consensus still could be reached on the Seat. The formal decision by the Ministerial Council will then be formalised later on and the EU position established by a 218(9)TFEU decision.

* 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.

- **General context**

Strengthening the regional cooperation within the Western Balkans is a key element for political stability, security, economic prosperity and social development in the region. In this context, the Transport Community will benefit to the accession framework for the Western Balkans by speeding up the alignment of national legislation with the Union *acquis* on transport and other relevant areas. The Transport Community will also be a key instrument which would foster the reform process in the initiated by the Western Balkan Six initiative, as well as the infrastructure (TEN-T) implementation and its financing in the region.

- **Consistency with existing policy provisions in the policy area**

The Transport Community Treaty is fully compliant with the existing transport provisions and will replace the existing cooperation framework, the South East Europe Transport Observatory (SEETO), which is in place since 2004.

- **Consistency with other Union policies and objectives**

The Transport Community Treaty is fully compliant with the policies and objectives set up in the framework of the cooperation with South East European partners or in the framework of the enlargement process. The Treaty will play a key role in supporting these policies by helping the Western Balkans countries to move closer to the Union transport *acquis*.

The Transport Community is also fully aligned with all the relevant transport related policies, such as environment or social policies.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

The Special Committee designated by the Council was consulted throughout the negotiations of the Treaty.

3. LEGALELEMENTS OF THE PROPOSAL

- **Legal basis**

The legal basis for the proposal is Articles 91 and 100(2) of the Treaty on the Functioning of the European Union, in conjunction with Article 218(5) thereof.

- **Choice of the instrument**

Pursuant to Article 218(5), the signing and provisional application of international agreements is to be decided by a decision of the Council.

4. BUDGETARY IMPLICATIONS

The impact on the Union budget is very limited, as the budget of the Transport Community shall only cover the operational expenses necessary for the functioning of its institutions. Funding is to be provided through the following budget line: IPA 2017/039-402.20/MC/Transport Community.

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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 Articles 91 and 100(2) , in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 12 June 2008 and 9 October 2009 the Council authorised the Commission to open negotiations on behalf of the Union with the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo^{*}, the Republic of Montenegro and the Republic of Serbia (hereafter: the South East European Parties) on a treaty establishing a Transport Community.
- (2) The negotiations were successfully concluded by the initialling of the Agreement of four South East European Parties. The two remaining South East European Parties are expected to initial the Agreement by 12 July 2017.
- (3) The agreement furthers the development of transport between the Union and the South East European Parties on the basis of the provisions of the Union acquis.
- (4) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (5) In order for the benefits of the Agreement to accrue as early as possible, the Agreement should be applied provisionally,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Transport Community Treaty is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement. The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

^{*} 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.

Article 3

The Agreement shall be applied provisionally, in accordance with Article 41(3) of the Agreement, as from the day of its signature, pending its entry into force.

Article 4

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

Done at Brussels,

*For the Council
The President*