



Brussels, 13.7.2018
COM(2018) 532 final

2018/0282 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the European Union, of the Treaty establishing the
Transport Community**

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 had been governed by the South East European Transport Observatory (SEETO), a the Memorandum of Understanding (MoU) of 11 June 2004 signed by Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, the United Nations Mission in Kosovo and the Commission. The main objective of the MoU was to extend the Trans-European Transport Network (TEN-T) and related policies to the Western Balkans.

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 – was suggested. In this context, based on the positive experience with the implementation of the Energy Community Treaty, the Commission proposed to take inspiration from this example for the purposes of the transport sector and negotiate an agreement providing that the legislation, standards and technical specifications applied by the Western Balkans partners be made 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, Kosovo¹, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, on a Treaty establishing the Transport Community ('TCT').

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, the finalisation of the TCT remained stalled for almost three years. The discussions were resumed in 2013 and an agreement on the final version of the TCT was reached in 2016.

The TCT was signed on behalf of the Union on 12 July and 9 October 2017, subject to its conclusion at a later date, in accordance with Council Decision 2017/1937² which authorised its signing and provisional application.

All South East European Parties except Kosovo have already ratified the TCT. In the meantime, the TCT is applied provisionally among the Parties in accordance with Article 41(3) of the TCT.

• **General context**

Strengthening 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 TCT will benefit the accession framework for the Western Balkans by speeding up the alignment of national legislation with the Union *acquis* on transport and related areas. The TCT will also be a key instrument to foster the reform process in the context of the Western Balkan Six initiative as well as the implementation of the TEN-T as extended to the Western Balkans.

¹ 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) 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)

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

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

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

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

The TCT is also fully aligned with all relevant transport related policies such as environment and social policies.

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

Not applicable

3. LEGAL ELEMENTS 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(6)(a) and Article 218(7) thereof.

Article 91 TFEU provides that measures concerning rail, road and inland waterway transport within the framework of the common transport policy shall be adopted in accordance with the ordinary legislative procedure. Paragraph 2 of Article 100 provides that appropriate provision for sea transport shall be as well adopted in accordance with the ordinary legislative procedure.

Article 218 TFEU lays down the procedure for the negotiation and conclusion of agreements between the European Union and third countries or international organisations. In particular, paragraph 6 thereof provides for the Council, on a proposal from the Commission as negotiator, to adopt a decision authorising the conclusion of an agreement on behalf of the European Union.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6)(a) TFEU, which envisages the adoption by the Council of a decision on the conclusion of international agreements, after having obtained the consent of the European Parliament.

4. BUDGETARY IMPLICATION

There will be no impact on the Union budget. In accordance with the TCT, Union contribution to the 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 Article 91 and Article 100(2), in conjunction with Article 218(6)(a) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament³,

Whereas:

- (1) The Commission has negotiated, on behalf of the Union, the Treaty establishing the Transport Community ('the Transport Community Treaty') between the European Union and Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia.
- (2) The Transport Community Treaty was signed on behalf of the Union on 12 July and 9 October 2017, subject to its conclusion at a later date, in accordance with Council Decision 2017/1937⁴.
- (3) The Transport Community 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 Commission should be empowered to approve, on behalf of the Union, amendments to the lists of Union legislation in Annex I, under Article 20(3)(a) of the Transport Community Treaty.
- (5) The Transport Community Treaty should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The Treaty establishing the Transport Community is hereby approved on behalf of the Union.
2. The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 41(1) of the Transport Community Treaty in order to express the consent of the Union to be bound by the Transport Community Treaty.

³ OJ

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 287, 27.10.2017, p. 1).

Article 2

The position to be taken by the Union as regards decisions of the Regional Steering Committee under Article 20(3)(a) of the Transport Community Treaty regarding merely the inclusion of Union legislation into Annex I to the Transport Community Treaty, subject to any technical adjustments needed, shall be adopted by the Commission.

Article 3

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

Done at Brussels,

*For the Council
The President*