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Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations on the revision of the Transport Community
Treaty**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Treaty establishing the Transport Community¹ (TCT) has been approved by the European Union² and ratified by six Western Balkan partners – 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). It entered into force on 1 May 2019.

It applies in the field of road, rail, inland waterway and maritime transport and provides for the progressive integration of transport markets and networks, including airport infrastructure, on the basis of the relevant EU legislation, including in the areas of technical standards, interoperability, safety, security, traffic management, competition, social policy, public procurement and environment.

Since 2019, the Transport Community has advanced this objective by strengthening regional cooperation and offering targeted technical assistance alongside capacity-building initiatives. Through these efforts, the Transport Community has made progress in aligning legislation and integrating transport markets both among the South East European Parties and between them and the EU. However, further work is still needed.

Article 42 of the TCT provides that the Treaty is to be reviewed at the request of any contracting party and at any event five years after its entry into force.

On 15 November 2022, the TCT contracting parties and the ministers in charge of transport from Ukraine, Georgia and the Republic of Moldova endorsed a joint statement on cooperation for the development of the transport sectors. This political document formed the basis of the involvement of these countries as observing participants in the work of the Transport Community. In the joint statement, the view was also expressed that the potential mutual benefits arising from the possible accession of Ukraine, the Republic of Moldova and Georgia to the TCT should be duly explored.

The present recommendation proposes that the Council authorises the Commission to open negotiations on the revision of the TCT.

The general objective should be to negotiate with the South East European Parties, Ukraine and the Republic of Moldova amendments to the TCT to support and strengthen the legislative alignment of all contracting parties with the relevant EU acquis, in view of their respective European perspectives.

This should include new mechanisms to reinforce the binding commitments contained in the TCT by providing for sanctions (such as suspending voting rights) in cases of serious and persistent breaches of these commitments. To strengthen the alignment mechanism with the acquis, a reinforced role for the Permanent Secretariat of the TCT should be sought. In addition, the amendments should refine the role of the TCT in supporting the development of the indicative extension of the trans-European transport network (TEN-T) to the South East

¹ OJ L 278, 27.10.2017, p. 3, ELI: http://data.europa.eu/eli/agree_internation/2017/1937/oj.

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>).

* 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.

European Parties, in particular by taking account of policy developments in the TEN-T legislative framework. Furthermore, Annex I to the TCT should also be revised, notably to add EU acquis pre-dating the signature of the TCT and to take into account relevant policy developments in the fields of transport or associated areas mentioned in Annex I. Finally, the amendments should aim to improve certain operational aspects that have been identified in the application of the TCT and to refine the rules on the application of the case law of the Court of Justice on matters covered by the TCT.

The amendments should also enable the full membership of Ukraine and the Republic of Moldova in the TCT. Further, to ensure their full integration in the TCT, the Commission should negotiate annexes on transitional arrangements, as referred to in Article 40 of the TCT, to be applicable to both of these countries upon their accession. In addition, the Commission should be able to address potential demands as regards the substance of the TCT from Ukraine and the Republic of Moldova.

In light of Georgia's democratic backsliding, including the enactment of the Law on transparency of foreign influence, which jeopardises Georgia's EU path and has *de facto* led to a halt of the accession process, the decision to take concrete steps towards Georgia's full membership to the TCT should be deferred. This deferral is in line with the discussions held at the European Council on 27 June 2024³, 17 October 2024⁴, and 19 December 2024⁵ and reflects the findings of the Commission's enlargement report.

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

The objectives of this recommendation are in line with and complement the EU's broader efforts to support reforms in the transport sectors of the South East European Parties, Ukraine, and the Republic of Moldova, as part of their overall accession processes. Since the entry into force of the TCT, the European Council has confirmed on numerous occasions that the future of the South East European Parties lies firmly within the EU. In March 2020, the members of the European Council endorsed the General Affairs Council's decision⁶ to open accession negotiations with the Republic of North Macedonia and the Republic of Albania. In March 2024, the European Council decided⁷ to open accession negotiations with Bosnia and Herzegovina. In December 2022, Kosovo submitted its application for EU membership.

The European Council of 14-15 December 2023 decided to open accession negotiations with Ukraine and the Republic of Moldova⁸. The accession negotiations for the two countries were formally launched at two intergovernmental conferences in Luxembourg on 25 June 2024.

Additionally, the objective of further supporting the integration of transport networks is in line with Regulation (EU) 2024/1679 of the European Parliament and of the Council⁹. Among other things, this Regulation provides for dedicated European Transport Corridors aiming to further strengthen connectivity between the Member States and the South East European Parties, Ukraine, and the Republic of Moldova.

³ <https://www.consilium.europa.eu/media/qa3lblga/euco-conclusions-27062024-en.pdf>.

⁴ <https://www.consilium.europa.eu/media/2pebccz2/20241017-euco-conclusions-en.pdf>.

⁵ <https://www.consilium.europa.eu/media/jhlenhaj/euco-conclusions-19122024-en.pdf>.

⁶ <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>.

⁷ <https://www.consilium.europa.eu/media/70880/euco-conclusions-2122032024.pdf>.

⁸ <https://www.consilium.europa.eu/media/68967/europeanCouncilconclusions-14-15-12-2023-en.pdf>.

⁹ Regulation (EU) 2024/1679 of the European Parliament and of the Council of 13 June 2024 on Union guidelines for the development of the trans-European transport network, amending Regulations (EU) 2021/1153 and (EU) No 913/2010 and repealing Regulation (EU) No 1315/2013 (OJ L, 2024/1679, 28.6.2024, ELI: <http://data.europa.eu/eli/reg/2024/1679/oj>).

- **Consistency with other Union policies**

The recommendation is in line with other EU policies, notably with regard to enlargement and neighbourhood policy. On 8 November 2023, the Commission adopted the new Growth Plan for the Western Balkans¹⁰, with the aim of bringing some of the benefits of EU membership to the region in advance of accession, boosting economic growth and accelerating much needed socio-economic convergence. The objective is to enable partners to step up reforms and investments to significantly accelerate the speed of the enlargement process and the growth of their economies.

Similarly, on 15 April 2024, the Commission endorsed the Ukraine Plan¹¹, which assists Ukraine in recovery, reconstruction and modernisation, and in particular supports the country's reform efforts on its path towards EU membership. Finally, on 10 October 2024, the Commission adopted a communication on the Growth Plan for Moldova¹², aiming to boost Moldova's economy and bring the country closer to EU membership by accelerating reforms and providing financial assistance.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The aim of the Transport Community Treaty is the creation of a Transport Community in the fields of road, rail, inland waterway and maritime transport, as well as the development of the transport network between the European Union and the South East European Parties. 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. Article 100(2) provides that appropriate provisions for sea transport shall be as well adopted in accordance with the ordinary legislative procedure. The substantive legal basis for the envisaged decision authorising the opening of negotiations on an agreement and addressing directives to the negotiator is therefore Article 91 and Article 100(2) TFEU.

Article 218 of the Treaty on the Functioning of the European Union (TFEU) lays down the procedure for the negotiation and conclusion of agreements between the EU and non-EU countries or international organisations. In particular, paragraph 3 of this Article provides for the Commission to submit recommendations to the Council, which adopts a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominates the EU negotiator or the head of the EU's negotiating team. Article 218(4) provides for the possibility for the Council to address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted. The procedural legal basis for the envisaged decision authorising the opening of negotiations on an agreement and addressing directives to the negotiator is Article 218(3) and (4) TFEU.

- **Union competence**

Article 216(1) TFEU stipulates:

¹⁰ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/new-growth-plan-western-balkans_en.

¹¹ https://neighbourhood-enlargement.ec.europa.eu/proposal-council-implementing-decision-approval-assessment-ukraine-plan_en.

¹² https://neighbourhood-enlargement.ec.europa.eu/growth-plan-moldova-commission-proposal_en.

‘The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.’

The TCT has been concluded by the Union by virtue of Council Decision (EU) 2019/392¹³. The TCT being an agreement between the EU and the South East European Parties, a modification of that agreement should be negotiated at the EU level.

The Transport Community is based on the progressive integration of transport markets of the South East European Parties into the EU transport market on the basis of the relevant *acquis*, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement and environment, for all modes of transport excluding air transport.

This proposal concerns the opening of negotiations in view of amending the TCT to: (i) support and strengthen the legislative alignment of the South East European Parties; (ii) strengthen the role of the Permanent Secretariat of the TCT; (iii) review Annex I to the TCT, notably to add EU *acquis* pre-dating the signature of the TCT and to take into account relevant policy developments in the field of transport or associated areas covered by that Annex; (iv) improve certain operational aspects; (v) refine the rules on the interpretation of the TCT in light of the case-law of the Court of Justice, pursuant to Article 19 of the TCT, to cover also case-law delivered after the date of signature of the TCT; and (vi) enable the full membership of Ukraine and the Republic of Moldova in the TCT, including by negotiating annexes on transitional arrangements for each of these countries. Therefore, the proposal does not affect the material scope of application of the agreement, is consistent with the policy objectives pursued by it and does not alter the EU’s competence in relation to it.

The EU has therefore exclusive competence to conclude an international agreement to amend the TCT and the annexes on transitional arrangements that are to be applicable upon the possible accession of Ukraine and the Republic of Moldova.

- **Proportionality**

The amendments to be negotiated do not modify the material scope of the TCT, and are limited to measures that are needed to ensure its more effective implementation and enable the full membership of Ukraine and the Republic of Moldova.

The envisaged agreement is the most efficient instrument to improve transport relations between the EU, the South East European Parties, Ukraine and the Republic of Moldova. The recommendation does not go beyond what is necessary to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

- **Choice of the instrument**

A Commission Recommendation for a Council Decision authorising the opening of negotiations is in line with Article 218(3) of the TFEU, which provides that the Commission

¹³ 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>).

shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations / fitness checks of existing legislation**

At the request of the Commission, the Permanent Secretariat set up an informal working group in January 2024 to carry out a preliminary assessment of the current implementation of the TCT and identify potential areas for substantive and operational improvements as part of the TCT review.

The informal working group, which was headed by the Permanent Secretariat, consisted of representatives of the Commission, of the Member States and of the South East European Parties, as well as representatives of the observing participants. It was tasked with identifying:

- potential substantive changes likely to bring a positive contribution to the TCT goal of closer transport market integration of the South East European Parties, based on the relevant EU *acquis*;
- potential need to improve support for monitoring the development of the indicative trans-European transport network (TEN-T) in the region;
- new work strands / tasks to address developments in EU relations with the South East European Parties; and
- potential operational changes likely to improve the proper functioning and implementation of the TCT.

The reflections have concluded and the Permanent Secretariat has prepared a final report containing a summary of the work and its main conclusions, and highlighting the main areas that could be addressed during the review process.

As part of the proceedings of the informal working group, Kosovo has requested to change its denomination as currently reflected in the TCT (Kosovo*) to “the Republic of Kosovo”. Kosovo would also like to change the way its borders are depicted in the indicative TEN-T maps in Annex I to the TCT. The Republic of North Macedonia has raised the need to re-examine the bilateral protocols attached to the TCT and adapt them to the specific situation of landlocked parties, in particular as regards the provisions relating to maritime transport. Montenegro observed that certain regulations listed in Annex I to the TCT would require updating.

- **Stakeholder consultations**

Over the course of 2023, the Commission services held a number of bilateral discussions with the South East European Parties on the closer involvement of the observing participants from Ukraine and the Republic of Moldova in the work of the TCT¹⁴.

¹⁴ These bilateral discussions also concerned the possible closer involvement of Georgia, as a current observing participant to the Transport Community.

Without prejudice to the formalisation of their respective government positions, there is generally strong support for the initiative to integrate Ukraine and the Republic of Moldova more closely in the work of the TCT with a view to full membership, with a notable caveat concerning the bilateral relations between one particular Western Balkan partner (Kosovo) and the observing participants.

Albania has raised no particular issues with the closer involvement of the observing participants in the work of the TCT and has stated that it is supportive of the TCT extension to Ukraine and the Republic of Moldova.

Bosnia and Herzegovina has expressed its support for the extension of the TCT to Ukraine and the Republic of Moldova.

Kosovo has underlined that it has no major issues with full membership in the TCT for the observing participants, while raising certain concerns such as the non-recognition of Kosovo's declaration of independence by Ukraine and the Republic of Moldova.

Montenegro has raised no issues with the closer involvement of the observing participants in the work of the TCT and has expressed support for the observing participants joining the TCT as full members.

North Macedonia has raised no issues with the closer involvement of the observing participants in the work of the TCT and has stated that it supports the accession of Ukraine and the Republic of Moldova to the TCT.

Serbia has raised no issues with the closer involvement of Ukraine and the Republic of Moldova in the work of the TCT; however, it has also noted that there is currently no official position of the government of Serbia regarding full TCT membership for the observing participants. Such a position would be determined following a more formal approach from the EU concerning the possible accession of Ukraine and the Republic of Moldova to the TCT.

In bilateral exchanges in 2023, the Commission services presented to Ukraine and the Republic of Moldova the preliminary positions of the South East European Parties on the prospects of full membership for the observing participants. The Commission services also mentioned the possible financial implications (i.e. contributions to the TCT budget). In these exchanges, Ukraine and the Republic of Moldova expressed their strong interest in joining the TCT as full members.

Additionally, the Commission published a call for evidence that ran between 6 November and 4 December 2024. The Commission received one anonymous contribution to the call for evidence, expressing overall support for the initiative to further integrate transport networks in the neighbourhood, but stressing that closer cooperation should only be sought with those partners who already closely cooperate with European partners.

- **Impact assessment**

The Recommendation does not commit the Commission to any specific position at this stage as it merely contains a recommendation for authorisation to enter into negotiations with the South East European Parties, Ukraine and the Republic of Moldova. These negotiations concern targeted amendments of a technical nature to an already existing international agreement and its extension to Ukraine and the Republic of Moldova. The outcome of the revision process will be determined based on international negotiations with non-EU

countries. The proposed accession of Ukraine and the Republic of Moldova to the TCT is based on a clear political signal by the European Council, which has granted EU candidate status to these countries and formally launched accession negotiations with them. In addition, Article 42 of the TCT requires to review that Agreement five years after its entry into force. The Commission is to adopt a recommendation for a Council Decision authorizing the opening of negotiations to that effect. Therefore, a formal impact assessment process is not warranted.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The initiative fully respects the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

While the impact on the EU budget is limited, it could represent an increase of up to 34% (EUR 0.8 million) of the annual EU contribution to the TCT, depending on the outcome of the negotiations on the calculation of the regional partners' respective contributions, and a one-off upfront investment of EUR 0.2 million.

In accordance with Article 35 of the TCT, the budget of the Transport Community only covers the operational expenses necessary for the functioning of its bodies.

The impact on the multiannual financial framework period in terms of estimated required budget and human resources is detailed in the legislative financial statement annexed to this recommendation.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The negotiation process is expected to start in 2025.

- **Detailed explanation of the specific provisions of the recommendation**

Article 1 includes the authorisation to conduct negotiations, on behalf of the Union, on an international agreement on the revision of the Treaty establishing the Transport Community (TCT).

Article 2 sets out that the negotiations should be conducted on the basis of the negotiating directives of the Council attached in the annex to the Decision.

Article 3 provides that the negotiations are to be conducted in consultation with a special committee.

Article 4 provides that the Decision is addressed to the Commission.

- **The choice of the negotiator**

Since the negotiations fall exclusively within the non-Common Foreign and Security Policy area, the Commission must be designated as the negotiator pursuant to Article 218(3) TFEU.

COUNCIL DECISION

authorising the opening of negotiations on the revision of the Transport Community Treaty

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) TFEU, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The TCT was signed by the Union in accordance with Council Decision (EU) 2017/1937¹⁵. On 4 March 2019, it was approved on behalf of the Union by means of Council Decision (EU) 2019/392¹⁶. It entered into force on 1 May 2019.
- (2) The TCT furthers the development of the transport network between the Union and 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) in the field of road, rail, inland waterway and maritime transport, and is based on the progressive integration of transport markets of the South East European Parties into the Union transport market on the basis of the relevant provisions of the Union *acquis*.
- (3) Article 42 of the TCT provides that the Treaty is to be reviewed at the request of any contracting party, and at any event five years after its entry into force.
- (4) In January 2024, a working group was set up to hold exploratory talks on TCT review. The working group was composed of representatives of the Commission, of the Member States, of the South East European Parties, and of the current observing participants. It has concluded its discussions on the need to update the TCT.
- (5) Considerable progress has been achieved in the closer engagement between the Transport Community and the observing participants from Ukraine and the Republic of Moldova.
- (6) The Union should participate in the negotiations on the amendment of the TCT.

¹⁵ 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).

¹⁶ 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).

* 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.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to conduct negotiations, on behalf of the Union, on an international agreement on the revision of the Treaty establishing the Transport Community (TCT).

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President