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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	9361/19
Subject:	Proposal for a Decision of the European Parliament and of the Council empowering Germany to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of international road passenger transport services by coach and bus in the border regions between the two countries – general approach

1. On 13 May 2019, the Commission adopted the abovementioned proposal. The Commission made this proposal following a request by Germany, on 11 May 2017, requesting an empowerment by the Union to amend its road transport agreement with Switzerland in order to allow the cabotage operations in the course of international road passenger transport in the respective border regions of both countries. In the June 2018 meeting of the EU-Switzerland Inland Transport Committee, Switzerland informed the Commission that it was also interested in this. Such cabotage operations could allow an increase in the load factor of the vehicles, could thereby increase the economic efficiency of the services and could contribute to enhancing sustainable mobility. This could also further strengthen the close integration of these border regions.

2. Article 3(2) of the Treaty on the Functioning of the European Union (TFEU) establishes the Union exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union. Regulation (EC) No 1073/2009 stipulates that coach and bus cabotage operations within the Union may be conducted, under certain conditions, exclusively by carriers holding a Community licence. So given the exclusive EU competence, the Union, as set out in Article 2(1) TFEU, should empower Germany to negotiate an amendment to its existing bilateral road transport agreement with Switzerland in order to allow for cabotage operations as described above, provided that there is no discrimination between carriers established in the Union and no distortion of competition.
3. The European Parliament did not start its work on the proposal yet. The European Economic and Social Committee and the Committee of the Regions have been invited to provide their opinion.
4. The Commission presented its proposal to the Working Party on Land Transport on 11 June 2019. The proposal was further examined and finalised in the Working Party on Land Transport on 2 July 2019. In light of the discussions, Article 2(1) TFEU was removed from the citations of legal bases; the Working Party confirmed its agreement with that change¹. Poland has a parliamentary scrutiny reservation.

Changes compared to the Commission proposal are reflected in **bold underlined** and ~~strikethrough~~ text.

5. The Council is therefore invited, subject to confirmation by the Permanent Representatives Committee, to adopt a general approach on the Commission proposal, on the basis of the text as presented in the Annex.

¹ Note: In addition to the change in the legal base, editorial changes have been made by the lawyer-linguist.

Proposal for a

DECISION (EU) 2019/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of...

empowering Germany to amend its ~~existing~~ bilateral road transport agreement with Switzerland of 1953 with a view to authorising cabotage operations in the course of international road passenger transport services by coach and bus in the border regions between the two countries

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles ~~2(1) and~~ 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) In accordance with Article 20(1) of the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and ~~by~~ Road³ (~~hereinafter~~ 'the EU Agreement'), the transport of passengers by coach and bus between two points situated on the territory of the same Contracting Party by carriers established in the territory of the other Contracting Party, known as cabotage, is not authorised.
- (2) In accordance with Article 20(2) of the EU Agreement, existing cabotage rights under bilateral agreements concluded between ~~the Member States of the Union~~ and Switzerland, which were in force when the EU Agreement was concluded, namely on 21 June 1999, may continue to be exercised provided that there is no discrimination between carriers established in the Union and no distortion of competition. The **Bilateral Road Transport** agreement between **Switzerland** and Germany ~~and Switzerland~~ of **17 December** 1953⁴ does not authorise cabotage operations during the provision of passenger transport services by coach and bus between the two countries. Therefore, the right to conduct such operations ~~as a result of a possible amendment to the agreement~~ is not among the rights covered by Article 20(2) of the EU Agreement.
- (3) International commitments permitting carriers from Switzerland to conduct cabotage operations within the Union are liable to affect Article 20 of the EU Agreement, to the extent that **that Article** ~~this provision~~ does not authorise such operations.
- (4) Furthermore, under Regulation (EC) No 1073/2009 **of the European Parliament and of the Council**⁵, cabotage operations within the Union may be conducted, under certain conditions, exclusively by carriers holding a Community licence. International commitments permitting carriers from third countries, not holding such a licence, to conduct operations of that kind are liable to affect that Regulation.

³ OJ L 114, 30.4.2002, p. 91.

⁴ ~~Text retrievable under no. "0.741.619.136" in the Systematic Compilation of Swiss Federal Legislation.~~

⁵ **Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006** (OJ L 300, 14.11.2009, p. 88).

- (5) Consequently, such commitments fall within the Union's exclusive external competence. Member States may negotiate or enter into such commitments only if empowered to do so by the Union in line with Article 2(1) **of the Treaty on the Functioning of the European Union** (TFEU).
- (6) Cabotage operations within the Union by third-country carriers, not holding a Community licence in accordance with Regulation (EC) No 1073/2009, affect the functioning of the internal market for coach and bus services, as established by the Union legislator through **that** Regulation (EC) No 1073/2009. It is therefore necessary that any empowerment under Article 2(1) TFEU be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU.
- (7) By letter dated 11 May 2017, Germany requested an empowerment by the Union to amend its road transport agreement with Switzerland with a view to authorising cabotage operations during the provision of passenger transport services by coach and bus in the ~~respective~~ border regions of the two countries.
- (8) Cabotage operations allow ~~increasing~~ the load factor of the vehicles **to be increased** which increases the economic efficiency of the services. It is therefore appropriate to authorise such operations in the course of the provision of international passenger transport services by coach and bus in the ~~respective~~ border regions of **Germany and** Switzerland ~~and Germany~~. This could further strengthen the close integration of these border regions.
- (9) In order to ensure that the cabotage operations concerned do not excessively alter the functioning of the internal market for coach and bus services, as established by Regulation (EC) No 1073/2009, their authorisation **of those operations** should be **conditional upon** ~~subject to the conditions that~~ there is **being** no discrimination between carriers established within the Union and no distortion of competition.

- (10) For the same reason, cabotage operations should only be authorised in the border regions of Germany in the course of the provision of coach and bus services between Germany and Switzerland. To this effect, it is necessary to define the border regions of Germany **for the purposes** ~~within the meaning~~ of this Decision in a manner that takes due account of the functioning of Regulation (EC) No 1073/2009, while allowing ~~to increase~~ the efficiency of the operations concerned **to be increased**,

HAVE ADOPTED THIS DECISION:

Article 1

Germany is hereby empowered to amend its ~~existing~~ bilateral road transport agreement with Switzerland **of 17 December 1953** with a view to authorising cabotage operations in the ~~respective~~ border regions of Germany and Switzerland in the course of the provision of coach and bus services between the two countries, provided that there is no discrimination between carriers established in the Union and no distortion of competition.

~~As border regions of Germany within the meaning the first paragraph shall be considered~~ **The** administrative districts of Freiburg and Tübingen in Baden-Württemberg and the administrative district of Swabia in Bavaria **shall be considered as border regions of Germany within the meaning of the first paragraph.**

Article 2

Germany shall inform the Commission of the amendment of its bilateral road transport agreement with Switzerland pursuant to Article 1 of this Decision and notify the text of **that amendment** ~~the said agreement~~. The Commission shall inform ~~the Council and~~ the European Parliament **and the Council** thereof.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at ~~Brussels~~,

For the European Parliament

The President

For the Council

The President
