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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 – Outcome of the European Parliament's first reading (Brussels, 13 to 16 May 2020)

I. INTRODUCTION

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Markus Ferber (EPP, DE) presented a compromise amendment (amendment number 1) to the proposal for a Decision on behalf of the Committee on Transport and Tourism. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 13 May 2020, the plenary adopted the compromise amendment (amendment number 1) to the proposal for a Decision. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position bringing to a close the first reading for both Institutions.

The legislative act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

International road passenger transport services by coach and bus in the border regions: cabotage operations between Germany and Switzerland *I**

European Parliament legislative resolution of 13 May 2020 on the 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 (COM(2019)0221 – C9-0001/2019 – 2019/0107(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2019)0221),
- having regard to Article 294(2) and Articles 2(1) and 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0001/2019),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 25 September 2019²,
- after consulting the Committee of the Regions,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Transport and Tourism (A9-0006/2020),

1. Adopts its position at first reading hereinafter set out;

² OJ C 14, 15.1.2020, p. 118.

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2019)0107

Position of the European Parliament adopted at first reading on 13 May 2020 with a view to the adoption of Decision (EU) 2020/... of the European Parliament and of the Council empowering Germany to amend its bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of the provision 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 *Article* 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 Committee³,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁴,

³ OJ C 14, 15.1.2020, p. 118.

⁴ Position of the European Parliament of 13 May 2020.

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 Road⁵ (the 'EU-Swiss 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-Swiss Agreement, existing cabotage rights under bilateral agreements concluded between Member States and Switzerland which were in force when the EU-Swiss 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 of 17 December 1953⁶ (the "Swiss-German Agreement") does not authorise cabotage operations in the course of the provision of road passenger transport services by coach and bus between the two countries. Therefore, the right to conduct such operations is not among the rights covered by Article 20(2) of the EU-Swiss Agreement and listed in Annex 8 thereto.

⁵ OJ L 114, 30.4.2002, p. 91.

⁶ Systematic Compilation of Swiss Federal Legislation—No **0.741.619.136**.

- (3) International commitments permitting carriers established in Switzerland to conduct cabotage operations within the Union are liable to affect Article 20 of the EU-Swiss Agreement, since that Article does not authorise such operations.
- (4) Regulation (EC) No 1073/2009 of the European Parliament and of the Council⁷ permits cabotage operations within the Union to be conducted exclusively by carriers holding a Community licence, under certain conditions. International commitments permitting third-country carriers, not holding such a licence, to conduct operations of that kind are liable to affect that Regulation.
- (5) Consequently, such international 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 accordance with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU).

⁷ ***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).***

- (6) Cabotage operations carried out within the Union by third-country carriers not holding a Community licence as provided for in Regulation (EC) No 1073/2009 affect the functioning of the internal market for coach and bus services, as established by that Regulation. It is therefore necessary that an 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 of 11 May 2017, Germany requested an empowerment from the Union to amend the Swiss-German Agreement with a view to authorising cabotage operations in the course of the provision of road passenger transport services by coach and bus in the border regions of Germany and Switzerland.

- (8) Cabotage operations allow the load factor of the vehicles to be increased, which increases the economic efficiency of the passenger transport services by coach and bus. It is therefore appropriate to authorise such operations in the course of the provision of road passenger transport services by coach and bus between Germany and Switzerland in the border regions of the two countries. This could further strengthen the close integration of those 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, the authorisation of cabotage operations should be conditional upon there being no discrimination between carriers established within the Union and there being 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 road passenger transport services by coach and bus between Germany and Switzerland. To this effect, it is necessary to define the border regions of Germany for the purposes of this Decision in a manner that takes due account of Regulation (EC) No 1073/2009, while allowing the efficiency of the operations concerned to be increased,

HAVE ADOPTED THIS DECISION:

Article 1

Germany is hereby empowered to amend its bilateral road transport agreement with Switzerland of 17 December 1953 (the 'Swiss-German Agreement') with a view to authorising cabotage operations in the border regions of Germany and Switzerland in the course of the provision of road passenger transport services by coach and bus between the two countries, provided that there is no discrimination between carriers established in the Union and no distortion of competition.

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

Article 2

Germany shall inform the Commission of the amendment of the Swiss-German Agreement pursuant to Article 1 of this Decision and shall notify the Commission of the text of that amendment.

The Commission shall inform the European Parliament and the Council thereof.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at ...,

For the European Parliament

For the Council

The President

The President
