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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus

Delegations will find attached document COM(2020) 566 final.

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2020/0257 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Interbus Agreement on the international occasional carriage of passengers by coach and bus ([1]) entered into force on 1 January 2003. The Agreement was later updated to reflect technical and legislative progress by Decision No 1/2011 ([2]) of the Joint Committee set up in Article 23 of the Agreement.

The Interbus Agreement currently covers the international occasional carriage of passengers by coach and bus. On 5 December 2014, the Council authorised the Commission to open negotiations, on behalf of the European Union which is a Contracting Party to the Interbus Agreement, to extend the scope of the Agreement to international regular and special regular carriage of passengers by coach and bus (subject to authorisation) ([3]).

On 16 July 2018, the Council adopted Decision (EU) 2018/1195 ([4]) on the signing of a Protocol to the Interbus Agreement regarding the international regular and special regular carriage of passengers by coach and bus (the 'Protocol on regular and special regular services').

It should be recalled that international regular and special regular carriage of passengers by coach and bus are important sectors providing mobility to European citizens with an affordable price structure. Their further development beyond the EU would equally benefit EU citizens, foreign tourists, the tourist industry and European regions. The constraints to this development are the differences in the bilateral agreements between Member States and third countries, which make the authorisation process and operation of international regular and special regular lines cumbersome. This is most clearly visible for long international regular lines, passing through several countries.

Market access for regular and special regular services should be granted, as set out in the Protocol, through a uniform authorisation procedure subject to implementation of the EU acquis in the field of road passenger transport, including road safety, technical provisions, driver qualifications, social rules, passenger rights, environment and admission to the occupation.

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1 OJ L 321, 26.11.2002, p. 11.

2 Decision No 1/2011 of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 adopting its rules of procedure and adapting Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and the requirements concerning the social provisions referred to in Article 8 of the Agreement (2012/25/EU) (OJ L 8, 12.1.2012, p. 38).

3 Council Decision of 5 December 2014 (SGS14/15073).

4 Council Decision (EU) 2018/1195 of 16 July 2018 on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus (OJ L 214, 23.8.2018, p. 3).

The Interbus Agreement will continue to be in force unchanged for the international occasional carriage of passengers by coach and bus.

The Protocol covers only the provisions needed to extend the Interbus Agreement to international regular and special regular carriage of passengers by coach and bus (under authorisation). It does not amend or repeat the common rules but refers to the underlying provisions in the Interbus Agreement. This and the fact that a Contracting Party can sign and conclude, ratify or accede to the Protocol only after having signed and concluded, ratified or acceded to the Interbus Agreement will guarantee that the Interbus rules are accepted and applied by the Contracting Parties when signing and concluding, ratifying or acceding to the Protocol.

Apart from the European Union, the Republic of Albania, Bosnia and Herzegovina, the Republic of Moldova, Montenegro, the Republic of North Macedonia, the Republic of Turkey and Ukraine are Contracting Parties to the Interbus Agreement and can sign and conclude, ratify or accede to the Protocol.

The Protocol emphasises the European Union legislation (Regulation (EC) No 1071/2009 ([5])) regarding penalties and most serious infringements as well as regarding the fulfilment of the four conditions for access to the profession of a road passenger transport operator (effective and stable establishment, good repute, financial standing and professional competence).

The Protocol introduces a Joint Committee to facilitate the management of the Protocol. The provisions regarding the Joint Committee set up under the Interbus Agreement apply *mutatis mutandis* to the Joint Committee under the Protocol.

According to the Protocol, the period of validity of an authorisation for international regular and special regular services cannot exceed five years.

The Protocol itself would be concluded for a period of five years, dating from its entry into force. The duration of the Protocol will automatically be extended to successive periods of five years among those Contracting Parties who do not express their wish not to do so.

The Protocol on regular and special regular services was open for signature from 16 July 2018 to 16 April 2019. The Union signed it on 11 April 2019. However, no other Contracting Parties have signed that Protocol before the period for signature expired. This made the entry into force of the Protocol impossible.

On 18 February 2020, the Council authorised the Commission to open negotiations, on behalf of the Union, for the amendment of the Protocol on regular and special regular services in order to make certain technical changes regarding its signing and entry into force, and to reflect the change in the denomination of one Contracting Party to the Interbus Agreement.

The negotiations were successfully concluded and a new version of the Protocol on regular and special regular services has been prepared accordingly. Considering that the Union is the only Contracting Party that signed the original Protocol, it has been considered more appropriate to replace the whole Protocol by a new one instead of negotiating a Protocol amending the original Protocol.

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[5] Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

The Protocol now needs three Interbus Contracting Parties (instead of four), including the Union, to conclude, ratify or accede to it in order for the Protocol to enter into force for those Contracting Parties that have concluded, ratified or acceded to it.

The period for signing the Protocol is two years starting from the date of adoption of the Council Decision on the signing of the Protocol by the European Union.

The entry into force of the Protocol was shortened for those Contracting Parties that have concluded, ratified or acceded to it, namely, from the first day of the third month to the first day of the month following that in which the required number of approvals or ratifications from the Contracting Parties will have been reached.

One Contracting Party has changed its denomination to the Republic of North Macedonia, which was also reflected in the Protocol.

The Protocol will replace the Protocol to the Interbus Agreement regarding the international regular and special regular passengers by coach and bus which was open for signature between 16 July 2018 and 16 April 2019 but was signed only by the Union, on the basis of Council Decision (EU) 2018/1195.

The Council Working Party on Land Transport, designated by the Council as a Special Committee under Article 218(4) TFEU was kept continuously informed of the progress in the negotiations.

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

The proposed Protocol is consistent with the Union's common transport policy. It encompasses the relevant parts of Regulation (EC) No 1073/2009 ([6]), as adapted for the purposes of a multilateral, international agreement.

- **Consistency with other Union policies**

The proposed Protocol is consistent with the EU neighbourhood policy and external relations.

- **Fiscal provisions**

Approximation of customs and fiscal provisions in the Protocol is, in the light of their aim and their content, only secondary and indirect in nature as compared to the transport policy objectives which the Protocol pursues.

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

- **Collection and use of expertise and Impact Assessment**

The Commission has not carried out an impact assessment, nor used external expertise. Extending the Interbus Agreement to international regular and special regular passenger

[6] Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules of 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).

services by coach and bus would help to widen the geographical scope of implementation of the European Union acquis in the field of road passenger transport.

The economic and social impacts would benefit the passenger transport industry and tourism. Increased traffic volumes would probably have moderate environmental impacts.

- **Simplification**

Harmonisation of the procedures for obtaining authorisations for international regular and special regular carriage of passenger by coach and bus would simplify the conduct of such operations.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Legal basis**

The legal basis is the Treaty on the Functioning of the European Union (TFEU), and in particular the substantive legal basis, Article 91 TFEU, in conjunction with Article 218(5) TFEU.

- **Choice of the instrument**

Article 218(5) TFEU provides for a Council Decision as the applicable instrument.

4. BUDGETARY IMPLICATION

None.

5. OPTIONAL ELEMENTS

- **Evaluation and reporting arrangements**

Article 16 of the Protocol provides that the functioning of the Protocol is to be evaluated every five years by the Joint Committee set up in Article 18 of the Protocol.

- **Further procedure**

The Commission considers that it is necessary to initiate the procedure with a view to signing the Protocol. Consequently, the Commission is hereby submitting to the Council this new proposal for a Council Decision on the signing of a Protocol on the international regular and special regular carriage of passengers by coach and bus to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement).

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

Specific provisions of the proposed Council Decision:

- Article 1 of the Council Decision provides, for the signing, on behalf of the Union, of a new version of the Protocol to the Interbus Agreement regarding the international regular and special regular carriage of passengers by coach and bus.

- Article 2 concerns the powers to sign the Protocol.

- Article 3 provides for the entry into force of the Council Decision.

Specific provisions of the Protocol:

- Article 1 defines the scope of the Protocol regarding international regular and special regular road passenger services with origin or destination in the Contracting Party where the operator is established and where the vehicles are registered or through which the service crosses with or without picking up or setting down passengers The Article also refers to partnership arrangements. Any form of cabotage is prohibited.

- Article 2 is a non-discrimination clause.

- Article 3 contains definitions.

- Article 4 refers to Annex 1 to the Interbus Agreement on the provisions applying to road passenger transport operators.

- Article 5 refers to Annex 2 to the Interbus Agreement on the technical conditions applying to vehicles.

- Article 6 contains provisions on international regular and special regular services subject to authorisation. *Inter alia*, it provides for the possibility for the Contracting Parties and Union Member States to decide on making regular or special regular services between Contracting Parties subject to partnership arrangements between the operators of the origin and destination of the service. Operators of the Contracting Parties or Member States crossed *en route* with passengers being picked up and set down should have the right to join such partnerships, if they so decide.

- Article 7 states that Sections V and VI of the Interbus Agreement on social provisions and custom and fiscal provisions apply to the Protocol.

- Article 8 provides for the authorising authority that issues the authorisations, the recipients of authorisations, period of validity of an authorisation, items to be specified in authorisations and the use of additional vehicles in temporary and exceptional circumstances.

- Article 9 defines the procedure for submitting an application for an authorisation.

- Article 10 provides for the authorisation procedure, including contacts between the relevant competent authorities, granting the authorisation and the sole reasons for possible rejection of an application.

- Article 11 lays down rules for the renewal or alteration of an authorisation.

- Article 12 provides for rules to lapse an authorisation.

- Article 13 provides for the obligations of transport operators.

- Article 14 states that the Contracting Parties should ensure that transport operators comply with the relevant provisions.

- Article15 (in conjunction with Article 8(9)) lists the documents to be carried on the vehicle. The same list of documents to be carried on the vehicle is reproduced on page three of the model authorisation in Annex 4 to the Protocol.

- Article 16 provides for the duration of the Protocol (5 years) with a tacit extension for successive periods of five years and periodic evaluations of the functioning of the Protocol.

- Article 17 refers to application *mutatis mutandis*, with some modifications, of provisions of the Interbus Agreement, in particular the five-year transitional period for existing regular and special regular road passenger transport services in bilateral agreements as well as conclusion, ratification or approval of the Protocol, its entry into force, denunciation and languages. The Article also provides for a decrease of the number of ratifications for the Protocol to enter into force from four (as per the Interbus Agreement) to three. In addition, the Protocol should enter into force, for the Contracting Parties that have signed and approved or ratified it, on the first day of the month following that in which three Contracting Parties, including the Union, have deposited their instruments of approval or ratification with the General Secretariat of the Council of the European Union.

- Article 18 establishes a Joint Committee to manage the Protocol *mutatis mutandis* with Articles 23 and 24 of the Interbus Agreement.

- Article 19 provides for the procedure when a non-Union Contracting Party of the Protocol accedes to the European Union.

- Article 20 indicates a signature period of two years for the Protocol starting from the date of adoption by the Council of this Council Decision and states that the Protocol can be concluded, acceded to or ratified only by Contracting Parties to the Interbus Agreement.

- Article 21 stipulates that after its entry into force, any Contracting Party to the Interbus Agreement may accede to the Protocol.

- Article 22 provides that the Annexes to the Protocol are an integral part thereof.

- Article 23 provides that the Protocol replaces the Protocol on regular and special regular services, which was open for signature between 16 July and 16 April 2019.

- Annexes 1 and 2 to the Protocol refer to Annexes 1 and 2 of the Interbus Agreement.

- Annex 3 provides for a Model of application for an international regular or special regular road passenger service subject to authorisation.

- Annex 4 provides for a Model of authorisation for an international regular or special regular road passenger service.

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on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission[1],

Whereas:

(1) By Council Decision 2002/917/EC[2], the Agreement on the international occasional carriage of passengers by coach and bus[3] (Interbus Agreement) was concluded, on behalf of the Union, on 3 October 2002 and entered into force on 1 January 2003[4].

(2) On 16 July 2018, the Council adopted Decision (EU) 2018/1195[5] on the signing of the Protocol on regular and special regular services'.

(3) The Protocol on regular and special regular services was open for signature from 16 July 2018 to 16 April 2019. The Union signed it on 11 April 2019. No other Contracting Parties to the Interbus Agreement signed that Protocol before the period for signature expired. This made the entry into force of the Protocol impossible.

(4) On 18 February 2020, the Council authorised the Commission to open negotiations for the amendment of the Protocol on regular and special regular services to make certain technical changes regarding its signing and entry into force, and to reflect the change in the denomination of one Contracting Party to the Interbus Agreement.

(5) The negotiations were successfully concluded. A new deadline of two year for the signature of the Protocol has been established. Moreover, the Protocol on regular and

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1 [ADD REFERENCE]

2 Council Decision 2002/917/EC of 3 October 2002 on the conclusion of the Interbus Agreement on the international occasional carriage of passengers by coach and bus (OJ L 321, 26.11.2002, p. 11).

3 OJ L 321, 26.11.2002, p. 13.

4 OJ L 321, 26.11.2002, p. 44.

5 Council Decision (EU) 2018/1195 of 16 July 2018 on the signing, on behalf of the European Union, of a Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus (OJ L 214, 23.8.2018, p. 3).

special regular services has been amended so that its entry into force requires approval or ratification by a smaller number of Contracting Parties, and a shorter waiting period following that approval or ratification, than specified in the Interbus Agreement. In addition, the change of denomination of the former Yugoslav Republic of Macedonia, to the Republic of North Macedonia, has been reflected in the Protocol.

(6) For reasons of clarity and in order to facilitate the rapid signature and entry into force of the Protocol, it has been considered appropriate to prepare a new Protocol on regular and special regular services thus amended which replaces the Protocol on regular and special regular services which was open for signature between 16 July 2018 and 16 April 2019.

(7) The Protocol should facilitate the provision of regular and special regular services between the Contracting Parties to the Interbus Agreement and hence give rise to improved passenger transport links between them.

(8) As regards general rules, notably the operation of the Joint Committee, and in order to facilitate its application, the new Protocol largely mirrors the rules established in the Interbus Agreement.

(9) In order for its benefits not to be excessively delayed, the Protocol provides for its entry into force, for the Contracting Parties that have approved or ratified it, when three Contracting Parties, including the Union, have approved or ratified it.

(10) Therefore, the new Protocol on regular and special regular services should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus, that replaces the Protocol to the Interbus Agreement which was open for signature between 16 July 2018 and 16 April 2019, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement[6].

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Protocol for the person(s) indicated by the negotiator of the Protocol.

Article 3

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

[6] The text of the Protocol will be published together with the Decision on its conclusion.

Done at Brussels,

For the Council
The President