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PROPOSAL

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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 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services

Delegations will find attached document COM(2017) 647 final.

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1073/2009 on common rules for access to the
international market for coach and bus services**

(Text with EEA relevance)

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{SWD(2017) 361 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of the second mobility package which aims to lead the fight against climate change, make European industry stronger and more competitive, and improve the quality of life and choice of citizens for their daily mobility. The freedom to move freely across the Union's territory is an essential achievement of the European Union. It has enabled citizens to travel smoothly between different Member States be it for their jobs or to go on holidays. This proposal will improve the mobility of citizens over longer distances and increase the use of sustainable transport modes. It will lead to services that are more responsive to citizens needs, in particular for those on lower incomes, with the added benefit of providing environmental, economic and social benefits. The proposal benefits the growing global demand for connectivity from all geographical areas and ensures accessibility for a broader range of the population. This contributes directly to the Commission's priorities of Jobs and Growth and Energy Union.

Regulation (EC) No 1073/2009 on common rules for access to the international market for coach services, and amending Regulation (EC) No 561/2006¹ was adopted as part of a legislative package with Regulation 1071/2009 on access to the occupation of road transportoperator². Together, these two regulations regulate the conditions for accessing the profession and the market in the field of transport of passengers by road. Both Regulations contribute to the good functioning of the single market in road transport, its efficiency and competitiveness.

Regulation (EC) No 1073/2009 lays down the provisions that undertakings intending to operate on the international road passenger transport market and on national markets other than the market of their Member State of establishment (known as cabotage operations) must comply with. It includes provisions on the documents to be issued to those undertakings by the Member State of registration (Community licence) and by the authorising authority (Authorisation for a regular service). It sets provisions on the sanctions for infringements of those obligations as well as the provisions on cooperation between Member States.

An *ex-post* evaluation of the Regulation was carried out from 2015 to 2017³ and concluded that the Regulation is only partly effective in achieving its original objective of promoting coach and bus services as a sustainable alternative to individual car transport. It found that the opening of national markets for regular services by coach and bus creates a critical mass of operators who then also introduce international services, resulting in a greater impact on the number of international routes and service frequencies than pan-European legislation alone. Further opening of national markets will strengthen the development of the international market for regular services, quite apart from any benefits for passengers making national journeys. The main problems identified were obstacles in national markets hindering the development of inter-urban coach and bus services and a low share of sustainable passenger transport modes. This proposal, which is a Regulatory Fitness and Performance (REFIT) initiative⁴, is intended to correct these shortcomings.

¹ OJ L 300, 14.11.2009, p. 88.

² OJ L 300, 14.11.2009, p. 51.

³ SWD (2017) 361

⁴ Initiative No. 9, Annex 2, Commission Work Programme 2017

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

This proposal is part of a broader ongoing review of the road transport legislation. It is closely linked to other existing legal acts concerning road transport, in particular to the legislation on access to the profession (Regulation (EC) No 1071/2009), on social legislation (Regulation (EC) No 561/2006⁵, Directive 2002/15/EC⁶, Directive 2006/22/EC⁷ and Regulation (EU) 165/2014⁸, and the Eurovignette (Directive 1999/62/EC⁹). Facilitating the provision of inter-urban coach and bus services, as suggested in the present proposal, will therefore be made easier through considering the internal market, social and posting of workers' rules together to ensure both fair working conditions for drivers and fair competition between operators.

- **Consistency with other Union policies**

The proposal is fully consistent with the priority of the Commission to create a deeper and fairer internal market. The internal market for the road passenger transport operations using coach and bus services will be strengthened. It is also in line with the objectives of the low emission mobility and Energy Union objective of decarbonising transport, as well as the common transport policy as described in the 2011 White Paper "Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system"¹⁰. The proposal will create new business opportunities for operators in the sector, thus increasing jobs and growth opportunities as well as choice for passengers. This proposal also reduces the regulatory burden on road passenger transport operators and clarifies the legal framework - both of which are objectives of the EU's REFIT programme.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the Regulation and for the proposed amendment derives from Title VI (Transport) of the Treaty on the Functioning of the European Union (TFEU), in particular Article 91 which states, inter alia, that the European Parliament and the Council shall lay down common rules applicable to international transport to or from the territory of a Member State, or passing across the territory of one or more Member States, as well as the conditions under which non-resident carriers may operate transport services within a Member State.

- **Subsidiarity (for non-exclusive competence)**

The EU shares competence with Member States in the field of transport under Article 4(2)(g) TFEU. However, amendments to existing rules can only be made by the EU legislator itself.

Besides, the patchwork of rules for access to national markets for coach and bus services constrains carriers' ability to develop services into pan-European coach networks and denies them the possibility to offer integration with other coach services and transport modes. Member States acting alone cannot introduce or ensure the coherence and coordination of

⁵ OJ L 102, 11.4.2006, p. 1.

⁶ OJ L 80, 23.03.2002, p. 35.

⁷ OJ L 102, 11.4.2006, p. 35.

⁸ OJ L 60, 28.2.2014, p.1.

⁹ OJ L 187, 20.7.1999, p. 42.

¹⁰ COM(2011) 144 final of 28.3.2011.

uniform market access rules needed for the emergence of a genuine internal market for road passenger transport. It is therefore necessary to provide rules at the EU level.

- **Proportionality**

As indicated in Section 7.3 of the impact assessment report, the policy proposal is proportionate to the problems that have been identified and it does not go beyond what is needed to solve them. The proposal only contains some targeted amendments to the Regulation which help improve the existing regulatory framework in which the road passenger transport sector in the EU operates and it does not create additional regulatory requirements for interested parties which would not be proportionate to the identified problems.

- **Choice of the instrument**

Since the legal act to be amended is a Regulation, the act amending it should in principle take the same form.

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

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

The staff working document to the *ex-post* evaluation of Regulation (EC) No 1073/2009 has been adopted with this proposal¹¹.

The main issues identified are the following:

- The inter-urban coach and bus sector has failed to grow at a rate comparable to that of other transport modes and its modal share has continued to decline over an extended period.
- There are obstacles in national markets hindering the development of inter-urban coach and bus services.
- International regular services by coach and bus, without competitive inter-urban services, constitute less appealing service offerings to users.
- The scope of the objectives of the original Regulation did not cover the problem of discrimination in access to terminals.
- There are excessive administrative costs of entry.

- **Stakeholder consultations**

The consultations of interested parties conducted in preparation of this proposal complied with the minimum standards for the consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM(2002) 704 final).

The consultation process included five separate consultation activities. Open and targeted consultation methods and various consultation tools were used.

¹¹ See Footnote 3.

As for the open consultation, there was a 13-week online public consultation (covering both *ex-post* and impact assessment) that took place between 14 December 2016 and 15 March 2017.

The main objectives were to:

- help check the problems faced by the sector, as identified in the *ex-post* evaluation;
- validate the objectives of the possible policy interventions; and
- obtain the opinion of interested parties on the appropriateness and expected impacts of the interventions.

It was comprised of two questionnaires, one for the general public and a more specialised one for key interested parties. The Commission received 171 contributions in total. The 18 contributions to the general questionnaire: 8 replies from citizens/consumers; 7 replies from companies; 2 replies from non-governmental organisations; and 1 reply from other respondents. The 153 contributions to the specialised questionnaire: 68 replies from companies engaged in the transport chain; 28 replies from non-governmental authorities; 17 replies from road passenger transport workers; 7 replies from regulatory authorities; 3 replies from EU governmental authorities; 3 replies from enforcement authorities; 1 reply from a citizen/consumer; 1 reply from an academic; and 25 replies from other respondents.

The targeted consultation involved sending a detailed questionnaire to key interested parties identified during the inception stage of the study. Four different questionnaires were produced, each tailored to the type of interested party: 20 replies from Ministries/Regulators; 2 replies from pan-European organisations; 3 replies from operators; and 6 replies from operator associations.

Interviews were conducted to gather more detailed insights into interested parties experiences as well as their views on the different measures under consideration. They also provided an opportunity to request quantitative data required for the impact assessment. In each case, specific questions were submitted in advance and/or sought clarification on information provided through the questionnaires. Interviews were conducted with 6 Ministries/Regulators; 4 pan-European organisations; 4 operators; and 4 operator associations.

A special Eurobarometer public opinion survey¹² on coach services was conducted amongst Europeans in the EU-28. There were 27,901 interviews between the 18 March 2017 and 27 March 2017. The objective of this survey was to gather the opinion of Europeans on a series of issues related to satisfaction with current coach services in their Member State and reasons for using/ not using such services. The key findings of the survey are:

- Across the EU, only a minority of respondents use coach services with over six in ten (64%) saying they never use coach services for domestic travel.
- The most common mentioned reason for using coach services is low prices (33%).
- The most commonly mentioned ways to make non-users of coach services more likely to use them are not having a car (37%), lower prices (26%) and more extensive network of routes and stations (11%).

¹² See https://data.europa.eu/euodp/it/data/dataset/S2144_87_1_457_ENG

Several seminars for interested parties, meetings and other events were organised during the course of the *ex-post* evaluation and the impact assessment.

The information gathered during the consultation confirmed the existence of the main problems identified during the *ex-post* evaluation.

On the possible policy measures, there was strong support among all interested parties to address discrimination in providing access to terminals. There were mixed reactions to the possible policy measures removing restrictions on access to inter-urban national markets with some groups of interested parties supporting changes and others expressing reluctance. Operator representative groups, operators and individuals working within the industry are generally more supportive of common frameworks, whereas some government bodies, regulators and non-government organisations stress the need for market access arrangements reflecting the circumstances of individual Member States and providing protection for public service contracts.

- **Collection and use of expertise**

An external contractor contributed to the accompanying support study for the impact assessment, which was concluded in August 2017¹³.

- **Impact assessment**

This proposal is supported by an impact assessment, which was considered by the Regulatory Scrutiny Board ('the Board') on two occasions. It initially received a negative opinion on the 24 July 2017 followed by a positive opinion with reservations on the 13 September 2017. All the Board's main comments were addressed in the revised version of the impact assessment. As mentioned in Annex 1 to the impact assessment report, the reservations were addressed as follows:

- The argumentation is strengthened to clarify the need for action at the EU level;
- The problem definition is restructured and revised to take into account the low share of sustainable transport modes;
- The general objectives are revised. There are two general objectives that are complementary and not mutually exclusive;
- The likely responses to the introduction of commercial services and expected impacts on public service contracts are described and the models of contracts typically used to connect rural areas are presented;
- The national differences in road and rail sectors are included; and
- Additional information on terminals is presented and it is clarified that the impact assessment is focused on equal access to terminals.

The impact assessment considered two sets of policy packages.

- The first set addressed the problems of 'Excessive administrative costs of entry' and 'Restricted access to national inter-urban markets'.

¹³ See Footnote 3.

- The second set of two policy packages addressed the problem of ‘Restricted access to key infrastructure’.

The problems associated with market access and the problems associated with access to terminals are not interlinked and the geographical scope of the effect is different in each case. More specifically, major restrictions on market access apply in only 14 member states, while the problem of discriminatory access to terminals is encountered across the EU-28. In both sets the policy packages were defined so as to reflect the increasing levels of regulatory intervention and of expected impacts.

The first policy package would open access to the market for regular services with the possibility to refuse authorisation if the economic equilibrium of an existing public service contract is compromised.

The second policy package provides Member States with possibility to refuse authorisation if the economic equilibrium of an existing public service contract is compromised by a proposed new service carrying passengers over distances of less than 100 kilometres as the crow flies.

The third policy package gets rid of the authorisation process for regular services carrying passengers over distances of 100 kilometres or more as the crow flies.

The fourth policy package encourages operators and managers of terminals to provide access to carriers operating regular services on fair and reasonable grounds and without discrimination between operators.

The fifth policy package involved equal access rules requiring operators and managers of terminals to provide access to carriers operating regular services on fair and reasonable grounds and without discrimination between operators.

The assessment showed that the best way forward would be a combination of the second and fifth policy packages. Overall this is considered to be the most effective combination and it is estimated to generate administrative savings for businesses and administrations in the range of EUR 1,560 million for the EU-28 over the assessment period (2015-2035). This combination would also have a positive impact on transport as such by leading to an increase of the activity of coach transport by more than 11 % in 2030 relative to the baseline and increase its modal share by almost one percentage point. It would improve the connectivity of disadvantaged social groups by 62 billion passenger-kilometres in 2030 while creating 85,000 new jobs and contribute to lower accident costs of €2.8 billion for the EU-28 over the assessment period. Equally, it would have a positive impact on the environment with a EUR 183 million net cumulative savings in CO2 emissions costs and net cumulative savings in air pollution costs of EUR 590 million for the EU-28. It is expected that this option would trigger a limited shift from rail to road transport and bring about a decrease in the modal share of rail of 0.4 percentage points in 2030 relative to the Baseline (from 8.4 % to 8 %) with a loss of revenue for rail public service contracts of 1.4 % and an increase in subsidy for coach public service contracts of less than 1 %. This would not undermine the sustainability of public service contracts serving remote urban areas.

The proposal is in line with the preferred option indicated in the impact assessment.

- **Regulatory fitness and simplification**

The proposal pursues the REFIT objective of increasing effectiveness and reducing regulatory burdens for businesses. This is done mainly by speeding up the authorisation procedure by

reducing the number of grounds for refusing the authorisation of a new coach line. The authorisation procedure is simpler and more transparent which effectively lowers the barrier for new entrants. Operators benefit because fewer refusal grounds provides them with more certainty when they are assessing the viability of a new line. The improved access to terminals will reduce the delay for undertakings gaining access to terminals and enable them to commence the new coach lines earlier securing incremental revenue more quickly. Finally, getting rid of the journey form will result in carrier having less administrative work to perform.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union¹⁴.

4. BUDGETARY IMPLICATIONS

The proposal has no implications on the Union budget.

5. OTHER ELEMENTS

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

The Commission will monitor and evaluate the implementation and effectiveness of the Regulation. The Commission will submit a report on the implementation and effects of this Regulation at the latest five years after the date it commences to apply. By liberalising the national markets for regular coach and bus services, this Regulation is expected to contribute to a better functioning of the road passenger transport market. The relevant information is to be gathered from national competent authorities and through a survey among road passenger transport operators.

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

The main elements of the proposal are the following:

Chapter I – GENERAL PROVISIONS

Article 1 – Scope

Currently Article 1(4) includes national road passenger services for hire or reward operated on a temporary basis by a non-resident carrier within the scope of the Regulation. It is proposed to amend this provision to include within the scope of the Regulation all regular services for hire and reward operated by a non-resident carrier.

Article 2 – Definitions

It is proposed to amend point 2 to clarify that express services are to be considered as regular services.

It is proposed to amend point 7 to update the definition following the liberalisation of national regular services.

¹⁴ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391.

It is proposed to add new definitions of a terminal and of a terminal operator. These definitions are a necessary precursor to regulating access to terminals.

It is proposed to add a new definition of viable alternative to clarify which other terminal(s) a terminal operator should indicate to the carrier when it refuses access to its own terminal.

Article 3a – Regulatory body

It is proposed to add a new Article requiring Member States to designate a Regulatory body which should be independent from any other public authority. The objective of that requirement is to avoid any conflicts of interest when a regulatory body is conducting an economic analysis to determine if economic equilibrium of a public service contract is compromised, or when is acting as an appeal body for access to terminals. The designated body may be a new or an existing body. The procedures provided for appointing the staff should contribute to its independence. The body should be able to obtain the information requested and enforce its decisions by means of appropriate penalties. Finally, the size of the Regulatory body in each Member State should be proportionate to the level of road passenger transport activities in that Member State.

Chapter II – COMMUNITY LICENCE AND MARKET ACCESS

Article 5 – Access to market

It is proposed to delete subparagraph five of Article 5(3) as it is considered that the requirement to communicate the names of carriers and their connection points en route to competent authorities has lost its relevance and generates an unnecessary administrative burden.

Article 5a – Access to terminals

It is proposed to add a new Article requiring that carriers are granted access rights to terminals on fair, equitable, non-discriminatory and transparent terms for the purpose of operating regular services. The conditions for access to terminals should be published.

Article 5b – Procedure for granting access to terminals

It is proposed to add a new Article to provide the procedure for accessing terminals. Applications for access should only be refused if there is a lack of capacity in the terminal. Decisions on applications for access are to be taken within two months and shall contain a proper statement of reasons. Carriers shall have the possibility to appeal decisions to the Regulatory body. The decision of the regulatory body should be binding.

Chapter III – REGULAR SERVICES SUBJECT TO AUTHORISATION

Article 8 – Authorising procedure for the international carriage of passengers over a distance of less than 100 kilometres as the crow flies

Article 8 is amended to provide the authorisation procedure for international regular services carrying passengers over a distance of less than 100 kilometres as the crow flies. Authorising authorities are required to seek the agreement of other Member States where passengers are picked up and set down and are carried over distances of less than 100 kilometres. Authorisations shall be granted unless rejection is justified under the clearly specified

grounds. If the competent authorities cannot reach agreement on the authorisation the matter may be referred to the Commission. The Commission is required to take a decision which will continue to apply until the authorising authority adopts its decision.

Article 8a – Authorising procedure for the international carriage of passengers over a distance 100 kilometres or more as the crow flies

Article 8a is added to provide the procedure for authorising international regular services carrying passengers over distances of 100 kilometres as the crow flies. The refusal of a new service cannot be justified on the grounds that it compromises the economic equilibrium of a public service contract.

Article 8b – Authorising procedure for national regular services

Article 8b is proposed to be added to provide the authorising procedure for national regular services. Authorisation for a new service carrying passengers over distance of less than 100 kilometres as the crow flies can be rejected if it compromises the economic equilibrium of a public service contract. Given the differences in the way Member States organise the different modes of public transport in their territories and the different geographical circumstances of Member States, the distance threshold may be increased to up to 120 kilometres if the new service is proposed to serve a place of departure and a destination already served by more than one public service contract.

Article 8c – Decisions by authorising authorities

Article 8c is proposed to be added to specify the decisions of authorising bodies. It provides for authorising authorities to grant authorisations, grant authorisations with limitations, or reject authorisations. It requires that decisions refusing authorisations or granting authorisations with limitations are justified. It specifies the grounds for rejecting an application.

Article 8d – Limitation of the right of access

Article 8d is proposed to be added to provide the procedure for protecting public service contracts. Member States may reject applications for authorisations if they compromise the economic equilibrium of a public service contract. Only specified interested parties may request the regulatory body to conduct the economic analysis. The regulatory body can conclude the authorisation can be granted, granted subject to conditions, or rejected. The conclusions of the regulatory body should be binding.

Chapter IV – SPECIAL REGULAR SERVICES EXEMPT FROM AUTHORISATION

Article 12 – Control documents

It is proposed to delete Article 12(1) to (5) to abolish the journey form as a control document for occasional services. This should eliminate an unnecessary administrative burden.

Article 13 – Local excursions

It is proposed to delete Article 13 as local excursions are liberalised under Article 15 making this Article redundant.

Chapter V - CABOTAGE

Article 15 – Authorised cabotage operations

It is proposed to amend this Article to specify that the requirement for regular services to be performed as part of a regular international service and the prohibition of cabotage operations in the form of regular services being carried out independent of a regular service are deleted. Local excursions are an authorised cabotage operation and are covered by subparagraph (b).

Article 17 – Control documents for cabotage operations

It is proposed to delete Article 17 so that journey forms are no longer required for cabotage operations in the form of occasional services. The control documents for special regular services are specified in Article 12(6).

Chapter VI – CONTROLS AND PENALTIES

Article 19 – inspections on the road and in undertakings

It is proposed to specify in Article 19(2) that carriers operating cabotage operations in the form of regular services are required to allow inspections as these services will be permitted to operate independent of operating international carriage of passengers.

Chapter VII – IMPLEMENTATION

Article 28 – Reporting

It is proposed to lay down reporting obligations so that the Commission has consistent and reliable information from all Member States to enable it to monitor and evaluate the implementation and effectiveness of the legislation. Draft new paragraph 5 provides that the Commission shall report to the European Parliament and to the Council within 5 years after the date of application of the Regulation on the extent to which the Regulation has contributed to a better functioning road passenger transport market.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services

(Text with EEA relevance)

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(1) 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 Committee¹⁵,
Having regard to the opinion of the Committee of the Regions¹⁶,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) The application of Regulation (EC) No 1073/2009 of the European Parliament and of the Council¹⁷ has revealed that operators in national markets are facing obstacles to the development of inter-urban coach services. Moreover, road passenger transport services have not kept pace with the evolving needs of citizens in terms of availability and quality and sustainable transport modes continue to have a low modal share. As a consequence, certain groups of citizens are placed at a disadvantage in terms of availability of passenger transport services, and there are more road accidents, emissions and congestion due to greater use of cars.
- (2) To ensure a coherent framework for the inter-urban carriage of passengers by regular coach and bus services throughout the Union, Regulation (EC) No 1073/2009 should apply to all inter-urban carriage by regular services. The scope of that Regulation should therefore be extended.
- (3) An independent and impartial regulatory body should be designated in each Member State to ensure the proper functioning of the road passenger transport market. That body may also be responsible for other regulated sectors such as rail, energy or telecommunications.
- (4) Commercial regular service operations should not compromise the economic equilibrium of existing public service contracts. For this reason, the regulatory body

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ 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).

should be able to carry out an objective economic analysis to ensure that this is the case.

- (5) Regular services in the form of cabotage operations should be conditional on the possession of a Community licence. In order to facilitate effective controls of those services by enforcement authorities, the rules regarding the issuing of Community licences should be clarified.
- (6) In order to ensure fair competition in the market, operators of regular services should be provided with access rights to terminals in the Union on fair, equitable, non-discriminatory and transparent terms. Appeals against decisions rejecting or limiting access should be lodged with the regulatory body.
- (7) While maintaining authorisation for regular services, certain rules regarding the authorisation procedure should be adapted.
- (8) Authorisation for both national and international regular services should be subject to an authorisation procedure. Authorisation should be granted, unless there are specific grounds for refusal attributable to the applicant, or the service would compromise the economic equilibrium of a public service contract. A distance threshold should be introduced to ensure that commercial regular service operations do not compromise the economic equilibrium of existing public service contracts. In the case of routes already served by more than one public service contract, it should be possible to increase that threshold.
- (9) Non-resident carriers should be able to operate national regular services under the same conditions as resident carriers.
- (10) Administrative formalities should be reduced as much as possible without abandoning the controls and penalties that guarantee the correct application and effective enforcement of Regulation (EC) No 1073/2009. The journey form constitutes an unnecessary administrative burden and should therefore be abolished.
- (11) Local excursions are an authorised cabotage operation and are covered by the general rules on cabotage. The article on local excursions should therefore be deleted.
- (12) In view of the importance of effective enforcement of Regulation (EC) No 1073/2009, the rules on inspections at the roadside and in undertakings should be amended to include cabotage operations.
- (13) Insofar as this Regulation harmonises the rules in national markets for regular coach and bus services and access to terminals, its objectives, namely the promotion of inter-urban mobility and the increase of the modal share of sustainable passenger transport modes, cannot be sufficiently achieved by the Member States. Therefore, the Union may adopt measures, in line with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve the objectives pursued.
- (14) In order to take into account market developments and technical progress the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I and II to Regulation (EC) No 1073/2009, and to supplement that Regulation with rules concerning the format of certificates for own-account transport operations, the format of applications for authorisations and authorisations themselves, the procedure and criteria to be followed to determine if a proposed service would compromise the

economic equilibrium of a public service contract, and the reporting obligations of Member States. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in line with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as the Member States' experts, and the European Parliament and the Council experts should systematically have access to the Commission's expert group meetings dealing with the preparation of delegated acts.

(15) Regulation (EC) No 1073/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1073/2009 is amended as follows:

- (1) in Article 1, paragraph 4 is replaced by the following:

“4. This Regulation shall apply to national road passenger services for hire or reward operated by a non-resident carrier as provided for in Chapter V.”;
- (2) Article 2 is amended as follows:
 - (a) point 2 is replaced by the following:

“2. ‘regular services’ means services which provide for the carriage of passengers at specified intervals along specified routes, either without intermediate stopping points or with passengers being picked up and set down at predetermined stopping points;”;
 - (b) point 7 is replaced by the following:

“7. ‘cabotage operation’ means a national road passenger transport service operated for hire or reward in a host Member State;”;
 - (c) the following points 9 to 11 are added:

“9. ‘terminal’ means any facility with a minimum area of 600m², which provides a parking place that is used by coaches and buses for the setting down or picking up of passengers;

10. ‘terminal operator’ means any entity responsible for granting access to a terminal;

11. ‘viable alternative’ means another terminal which is economically acceptable to the carrier, and allows it to operate the passenger service concerned.”;
- (3) the following Article 3a is inserted before Chapter II:

“Article 3a

Regulatory body

1. Each Member State shall designate a single national regulatory body for the road passenger transport sector. That body shall be an impartial authority which is, in organisational, functional, hierarchical and decision

¹⁸ OJ L 123, 12.5.2016, p. 1.

making terms, legally distinct and independent from any other public or private entity. It shall be independent from any competent authority involved in the award of a public service contract.

The regulatory body may be responsible for other regulated sectors.

2. The regulatory body for the road passenger transport sector shall have the necessary organisational capacity in terms of human and other resources, which shall be proportionate to the importance of that sector in the Member State concerned.

3. The regulatory body shall perform the following tasks:

- (a) carry out economic analyses of whether a proposed new service would compromise the economic equilibrium of a public service contract;
- (b) collect and provide information on access to terminals; and
- (c) decide on appeals against decisions of terminal operators.

4. The regulatory body may, in exercising its tasks, request relevant information from the competent authorities, terminal operators, applicants for authorisation and any third party involved within the territory of the Member State concerned.

Information requested shall be supplied within a reasonable period set by the regulatory body and not exceeding one month. In justified cases, the regulatory body may extend the time limit for submission of information by a maximum of two weeks. The regulatory body shall be able to enforce requests for information by means of penalties which are effective, proportionate and dissuasive.

5. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. That review may have suspensive effect only when the immediate effect of the regulatory body's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law of the Member State concerned.

6. Decisions taken by the regulatory body shall be made public.”;

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced with the following:

“1. International carriage of passengers and cabotage operations by coach and bus shall be carried out subject to possession of a Community licence issued by the competent authorities of the Member State of establishment.”;

(b) in paragraph 2, the third subparagraph is replaced by the following:

“The Commission is empowered to adopt delegated acts in accordance with Article 26 amending Annexes I and II in order to adapt them to technical progress.”;

(5) Article 5 is amended as follows:

(a) in paragraph 3, the fifth subparagraph is deleted;

(b) in paragraph 5, the third subparagraph is replaced by the following:

“The Commission is empowered to adopt delegated acts in accordance with Article 26 establishing the format of the certificates.”;

(6) the following Article 5a is inserted:

“Article 5a

Access to terminals

1. Terminal operators shall grant carriers the right to access terminals for the purpose of operating regular services including any facilities or services provided in that terminal under fair, equitable, non-discriminatory and transparent conditions.

2. Terminal operators shall endeavour to accommodate all requests for access in order to ensure optimum use of terminals.

Requests for access may be refused only on the grounds of lack of capacity.

Where a terminal operator refuses a request for access, it shall indicate any viable alternatives.

3. Terminal operators shall publish at least the following information in two or more official languages of the Union:

(a) a list of all services provided, and the prices for those services;

(b) the rules for scheduling the allocation of capacity;

(c) the current timetable and capacity allocation.

That information shall be made available free of charge in electronic format by the terminal operator and the regulatory body on request, and where they have websites, on those websites.

The information shall be kept up to date and amended as necessary.”;

(7) the following Article 5b is inserted:

“Article 5b

Procedure for granting access to terminals

1. A carrier seeking access to a terminal shall submit an application to the terminal operator.

2. If access cannot be granted as requested in the application, the terminal operator shall initiate consultations with all interested carriers with a view to accommodating the application.

3. The terminal operator shall take a decision on any application for access to a terminal within two months of the date of submission of the application by the carrier. Decisions on access shall state the reasons on which they are based.

4. Applicants may appeal against decisions by terminal operators. Appeals shall be lodged with the regulatory body.

5. Where the regulatory body hears an appeal against a decision by a terminal operator, it shall adopt a reasoned decision within a fixed timeframe and, in any case within three weeks from receipt of all relevant information.

The decision of the regulatory body on the appeal shall be binding. The regulatory body shall be able to enforce it by means of penalties which are effective, proportionate and dissuasive

The decision shall be subject to judicial review only.";

(7) Article 6 is amended as follows:

(a) in paragraph 1, the first sentence of the first subparagraph is replaced by the following:

“Authorisations shall be issued in the name of the carrier, in paper or electronic format and shall be non-transferable.”;

(b) paragraph 4 is replaced by the following:

“4. The Commission is empowered to adopt delegated acts in accordance with Article 26 establishing the format of the authorisations.”;

(8) Article 7 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

“1. Applications for authorisation of regular services shall be submitted to the authorising authority in paper or electronic format.

2. The Commission is empowered to adopt delegated acts in accordance with Article 26 establishing the format of the applications.”;

(9) Article 8 is replaced by the following:

“Article 8

Authorisation procedure for the international carriage of passengers over a distance of less than 100 kilometres as the crow flies

1. Authorisations shall be issued in agreement with the competent authorities of all the Member States in whose territories passengers are picked up or set down and are carried over distances of less than 100 kilometres as the crow flies. The authorising authority shall send a copy of the application, together with copies of any other relevant documentation, within two weeks of receipt of the application to such competent authorities with a request for their agreement. At the same time, the authorising authority shall forward those documents to the competent authorities of other Member States whose territories are crossed, for information.

2. The competent authorities of the Member States whose agreement has been requested shall notify the authorising authority of their decision within three months. The time limit shall be calculated from the date of receipt of the request for agreement which is demonstrated by the acknowledgement of receipt. If the competent authorities of the Member States whose agreement has been requested do not agree, they shall state the reasons.

If the competent authorities of the Member States whose agreement has been requested do not reply within the time limit laid down in the first subparagraph, they shall be deemed to have given their agreement.

3. The authorising authority shall take a decision on the application within four months of the date of submission of the application by the carrier.

4. Authorisation shall be granted unless refusal can be justified on one or more of the grounds listed in points (a) to (d) of Article 8c(2).
5. If one of the competent authorities does not agree to the authorisation, the matter may be referred to the Commission within two months following receipt of its reply.
6. After having consulted the Member States of the competent authorities which disagreed, the Commission shall, within four months from receipt of the communication from the authorising authority, take a decision. The decision shall take effect 30 days after its notification to the Member States concerned.
7. The Commission decision shall apply until such time as the Member States reach an agreement and the authorising authority adopts a decision on the application.

(10) the following Articles 8a to 8d are inserted:

“Article 8a

Authorisation procedure for the international carriage of passengers over a distance of 100 kilometres or more as the crow flies

1. The authorising authority shall take a decision on the application within two months of the date of submission of the application by the carrier.
2. Authorisation shall be granted unless refusal can be justified on one or more of the grounds listed in points (a) to (c) of Article 8c(2).
3. The authorising authority shall forward to the competent authorities of all Member States in whose territories passengers are picked up or set down, as well as to the competent authorities of Member States whose territories are crossed without passengers being picked up or set down, a copy of the application, together with copies of any other relevant documentation, and its assessment, for information.

Article 8b

Authorisation procedure for national regular services

1. The authorising authority shall take a decision on the application within two months of the date of submission of the application by the carrier. This may be extended to four months where an analysis is requested in accordance with Article 8c(2)(d).
2. Authorisations for national regular services shall be granted unless refusal can be justified on one or more of the grounds listed in points (a) to (c) of Article 8c(2) and, if the service is carrying passengers over a distance of less than 100 kilometres as the crow flies, Article 8c(2)(d).
3. The distance referred to in paragraph 2 may be increased to 120 kilometres if the regular service to be introduced will serve a point of departure and a destination which are already served by more than one public service contract.

Article 8c

Decisions of authorising authorities

1. Following the procedure laid down in Articles 8, 8a or 8b, the authorising authority shall grant the authorisation, grant the authorisation with limitations or reject the application. The authorising authority shall inform all the competent authorities referred to in Article 8(1) of its decision.

2. Decisions rejecting an application or granting authorisation with limitations shall state the reasons on which they are based.

Authorisation shall be granted unless rejection can be justified on one or more of the following grounds:

(a) the applicant is unable to provide the service which is the subject of the application with equipment directly available to it;

(b) the applicant has not complied with national or international legislation on road transport, and in particular the conditions and requirements relating to authorisations for international road passenger services, or has committed serious infringements of Union road transport legislation in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers;

(c) in the case of an application for renewal of authorisation, the conditions of authorisation have not been complied with;

(d) a regulatory body establishes on the basis of an objective economic analysis that the service would compromise the economic equilibrium of a public service contract.

Authorising authorities shall not reject an application solely on the grounds that the carrier offers lower prices than those offered by other road carriers or the fact that the link in question is already operated by other road carriers.

3. Member States shall ensure that decisions taken by the authorising authority are subject to judicial review. That review may have suspensive effect only when the immediate effect of the authorising authority's decision may cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as conferred by constitutional law of the Member State concerned.

Article 8d

Limitation of the right of access

1. Member States may limit the right of access to the international and national market for regular services if the proposed regular service carries passengers over distances of less than 100 kilometres as the crow flies and if the service would compromise the economic equilibrium of a public service contract.

2. The competent authorities that awarded a public service contract or the public service operators performing the public service contract may request the regulatory body to carry out an analysis of whether the economic equilibrium of the public service contract would be compromised.

The regulatory body shall examine the request and decide whether to carry out the economic analysis. It shall inform the interested parties of its decision.

3. Where the regulatory body carries out an economic analysis, it shall inform all interested parties of the results of that analysis and its conclusions within six weeks following receipt of all relevant information. The regulatory body may conclude that the authorisation is to be granted, is to be granted subject to conditions or is to be rejected.

The conclusions of the regulatory body shall be binding on the authorising authorities.

4. The competent authorities and the public service operators shall provide the regulatory body with the necessary information for the purposes of paragraphs 2 and 3.

5. The Commission is empowered to adopt delegated acts in accordance with Article 26 establishing the procedure and criteria to be followed for the application of this Article.";

(11) in Article 9, the first paragraph is replaced by the following:

“Articles 8, 8a, 8b and 8c shall apply, *mutatis mutandis*, to applications for the renewal of authorisations or for alteration of the conditions under which the services subject to authorisation must be carried out.”;

(12) the title of Chapter IV is replaced by the following:

“SPECIAL REGULAR SERVICES EXEMPT FROM AUTHORISATION”

(13) in Article 12, paragraphs 1 to 5 are deleted;

(14) Article 13 is deleted;

(15) Article 15 is replaced by the following:

“Article 15

Authorised cabotage operations

Cabotage operations shall be authorised for the following services:

(a) special regular services carried out on a temporary basis provided that they are covered by a contract concluded between the organiser and the carrier;

(b) occasional services carried out on a temporary basis;

(c) regular services performed in accordance with this Regulation.”;

(16) Article 17 is deleted;

(17) in Article 19(2), the first sentence is replaced by the following:

“2. Carriers operating cabotage or international carriage of passengers by coach and bus shall allow all inspections intended to ensure that operations are being conducted correctly, in particular as regards driving and rest periods.”;

(18) Article 20 is replaced by the following:

“Article 20

Mutual assistance

1. Member States shall assist one another in ensuring the application and monitoring of this Regulation. They shall exchange information via the national contact points established pursuant to Article 18 of Regulation (EC) No 1071/2009.

2. The regulatory bodies shall cooperate when carrying out economic analyses of whether proposed regular services would compromise a public service contract for the international operation of public transport services. The authorising authority shall consult the regulatory bodies of all other Member States through which the international regular service concerned runs and, where appropriate, shall request all necessary information from them before taking its decision.”;

(19) Article 26 is replaced by the following:

“*Article 26*

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 4(2), 5(5), 6(4), 7(2), 8d(5) and 28(3) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].

3. The delegation of power referred to in Articles 4(2), 5(5), 6(4), 7(2), 8d(5) and 28(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 4(2), 5(5), 6(4), 7(2), 8d(5) and 28(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”;

(20) Article 28 is replaced by the following:

“*Article 28*

Reporting

1. Each year, by 31 January at the latest, and for the first time by 31 January [...*the first January following the entry into force of this Regulation*] Member States shall communicate to the Commission the number of authorisations for regular services issued the previous year and the total number of authorisations for regular services valid on 31 December of that year. That information shall be given separately for each Member State of destination of the regular service. Member States shall also communicate to the

Commission the data concerning cabotage operations, in the form of special regular services and occasional services, carried out during the previous year by resident carriers.

2. Each year, by 31 January at the latest and, for the first time by 31 January [...the first January following the entry into force of this Regulation], the competent authorities in the host Member State shall provide the Commission with statistics on the number of authorisations issued for cabotage operations in the form of the regular services referred to in Article 15(c) during the previous year.

3. The Commission is empowered to adopt delegated acts in accordance with Article 26 to establish the format of the table to be used for the communication of the statistics referred to in paragraphs 1 and 2 and the data to be provided.

4. Each year, by 31 January at the latest and, for the first time by 31 January [...the first January following the entry into force of this Regulation], Member States shall inform the Commission of the number of carriers holding a Community licence as of 31 December of the previous year and of the number of certified copies corresponding to the number of vehicles in circulation on that date.

5. By [please insert the date calculated 5 years after date of application of this Regulation], the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation. The report shall include information on the extent to which this Regulation has contributed to a better functioning road passenger transport market."

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [XX]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President