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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules ensuring basic road freight and road passenger connectivity following the end of the transition period mentioned in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Since 1 February 2020, the United Kingdom has withdrawn from the Union pursuant to Article 50 of the Treaty on European Union. The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community¹ ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135² and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of that agreement, ends on 31 December 2020.

On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.³ As implied by the negotiation directives, the authorisation covers inter alia the elements needed to address comprehensively the road transport relationship with the United Kingdom after the end of the transition period.

However, it is uncertain whether an agreement between the Union and the United Kingdom governing their future relationship in this area will have entered into force by the end of that period.

All rights and obligations ensuing from Union law in respect of access to the road transport market, as established by Regulation (EC) No 1072/2009⁴ and Regulation (EC) No 1073/2009⁵, will end on 31 December 2020, when the transition period established by the Withdrawal Agreement will expire. This will result in the loss of validity of Community licences issued by the United Kingdom to road haulage operators and to bus and coach operators, and thereby loss of access to the Union's road haulage and passengers market for holders of such licences. Similarly, European Union road haulage and bus and coach operators, on the basis of the existing Community licences, will equally lose automatic access to the United Kingdom's road freight and passenger transport market.

It follows that, in the absence of an agreement between the Union and the United Kingdom governing the matter, after the end of the transition period, the multilateral quota system of the European Conference of Ministers of Transport (ECMT) would become the only available legal framework on which the continuation of road freight transport services could be based, subject to the possession of an ECMT permit. A vehicle equipped with an ECMT permit may carry goods between any of the 43 countries participating in the system, among which are 26 of the EU Member States (all but Cyprus), the United Kingdom, and 16 other countries.

¹ OJ L 29, 31.1.2020, p. 7.

² Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 1).

³ OJ L 58, 27.2.2020, p. 53

⁴ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

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).

Following an international haulage operation from the country of registration of the vehicle to another ECMT country, up to three operations where the country of registration is not involved are possible before the vehicle has to return to the country where it is registered.

The number of ECMT permits is limited for each Member State and permits for 2021 have already been distributed at national level by the competent authorities of each Member State. Their number cannot be increased at short notice. ECMT quotas are set annually and any changes to the number of permits allocated to an ECMT country have to be agreed unanimously by all ECMT countries.

As already highlighted in Regulation (EU) 2019/501 of the European Parliament and of the Council which was adopted on 25 March 2019⁶, considering the volumes of road freight transport services and the goods carried by road between the United Kingdom and the Union (around 51 million tonnes in 2019; some 29 million tonnes from the Union to the United Kingdom and some 22 million tonnes from the United Kingdom to the Union), it is evident that reliance solely on the ECMT quota system does not currently constitute an adequate solution to ensure basic road freight transport connectivity immediately after the end of the transition period.

The carriage of goods by road between the United Kingdom and the Member States is almost entirely in the hands of United Kingdom and Union road haulage operators. The loss by those operators of their right to provide road freight transport between the United Kingdom and the Union would therefore result in serious disruptions including in respect of public order.

As far as passenger transport by bus and coach is concerned, in the absence of an agreement between the Union and the United Kingdom governing the matter, the Agreement on the international occasional carriage of passengers by coach and bus⁷ ("Interbus Agreement") is the only available legal framework that could provide, after the end of the transition period, a basis for the carriage of passengers by bus and coach between the Union and the United Kingdom. The United Kingdom deposited its instrument of accession to the Interbus Agreement on 29 October 2020. It will therefore become a Contracting Party in its own right on 1 January 2021. However, the Interbus Agreement covers only occasional services and is, therefore, inadequate to address the disruptions ensuing from the end of the application of Union law to and in the United Kingdom, given the high number of persons that would continue to seek to travel between the Union and the United Kingdom. A Protocol to the Interbus Agreement covering regular and special regular passenger transport services by coach and bus was negotiated between its Contracting Parties, but it is not expected to enter into force in time to offer a viable alternative solution for the period immediately after the end of the transition period. Therefore, in the case of regular and special regular passenger transport services by coach and bus, the current instruments do not address the needs of such services between, on the one side, the Union and, on the other side, the United Kingdom.

Cross-border coach and bus services between Ireland and the United Kingdom in respect of Northern Ireland are of particular importance for communities living in the border regions, in view of ensuring basic connectivity between communities inter alia as part of the Common Travel Area. No instrument exists that could address the need for coach and bus operators

⁶ Regulation (EU) 2019/501 of the European Parliament and of the Council of 25 March 2019 on common rules ensuring basic road freight and road passenger connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (OJ L 85, 27.3.2019, p. 39).

⁷ OJ L 321, 26.11.2002, p. 13.

operating regular or special regular services to pick up and set down passengers in regions on the other side of the border. However, the economic viability of many cross-border services is at risk without the right to carry out cabotage operations. It is therefore appropriate for the Union to adopt temporary and time-limited contingency measures to mitigate such potentially disruptive effects for connectivity between the Union and the United Kingdom.

The present proposal thus has the objective to lay down temporary measures to govern the carriage of goods by road as well as the provision of regular and special regular passenger transport services between, on the one side, the Union and, on the other side, the United Kingdom following the end of the transition period referred to in Article 126 of the Withdrawal Agreement (Article 1). These measures are intended to maintain basic connectivity for a strictly time-limited period (Article 2).

Gibraltar is not included in the territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.

In the first place (Article 3), the proposed Regulation provides for the unilateral granting of rights for bilateral carriage to road haulage operators established in United Kingdom so that they can continue to carry goods between their territory and the Union.

The proposed Regulation also provides (Article 4) for the unilateral granting of rights for the bilateral carriage of passengers by coach and bus as part of regular or special regular services to bus and coach operators established in the United Kingdom so that they can continue to carry passengers between their territory and the Union. The Regulation further provides for the unilateral granting of rights to pick up and set down passengers in the border region of Ireland in the course of international regular and special regular services between Ireland and the United Kingdom in respect of Northern Ireland.

The rights granted to United Kingdom road operators are subject to conformity with the relevant Union law applicable to road freight and road passenger transport operators (Article 6) and equivalent rights being granted by the United Kingdom to Union road operators. The proposed Regulation lays down a mechanism (Article 7) to ensure that the rights enjoyed by Union road operators in the United Kingdom are equivalent to those granted to United Kingdom road operators under the proposed Regulation. If that is not the case, the Commission is empowered to adopt the necessary measures to correct the situation by means of delegated acts, including the limitation to the allowable capacity available to United Kingdom road operators or to the number of journeys or to both. The assessment of the level of equivalence and the adoption of corrective measures by the Commission are not solely linked to strict, formal correspondence between the two legal orders; this is because of the marked differences between the respective markets and in order to avoid a blind mirroring approach which might in the end prove counter to the Union interest.

The proposed Regulation, even though it aims to temporarily ensure basic connectivity for road freight and road passenger transport, lays down a flexible mechanism to ensure that Union road haulage operators and coach and bus service operators enjoy fair and equal opportunities to compete with United Kingdom road haulage operators and coach and bus service operators. A level playing field requires that, even after the end of the transition period, the United Kingdom continues to apply sufficiently high and comparable standards in the area of road freight and road passenger transport as regards: fair competition including the regulation of cartels, abuse of dominant position and mergers; the prohibition of unjustified government subsidies; the protection of workers and a high level of road safety; the protection of the environment; safety and security, or relating to the granting of licences to road

operators or to the qualification, training and medical controls for professional drivers. Moreover, it must be ensured that Union road operators are not discriminated against in the United Kingdom, be it *de jure* or *de facto*. The proposed Regulation thus charges the Commission (Article 8) with the task to monitor the conditions of competition between, on the one hand, Union road operators and, on the other hand United Kingdom road operators and empowers it to adopt the necessary measures, by means of delegated acts, to ensure that those conditions remain level at all times.

The necessary procedures are established so as to enable the Member States and the Commission to verify that United Kingdom road operators carrying goods or passengers under this Regulation are licensed or certified in accordance with relevant standards, that all relevant national and Union legislation is complied with and that the allowed rights are not exceeded.

Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 already cover the part of a journey between a Member State and a third country on the territory of any Member State crossed in transit. It is necessary to ensure that these regulations also apply to the part of the journey on the territory of the Member State of loading or unloading for freight transport, and to the part of the journey on the territory of the Member State of picking up or setting down passengers for coach and bus services (Article 9). Such an extension will ensure that Union operators can perform cross-trade operations to or from the United Kingdom, as well as additional stops in their coach and bus services.

Explicit provision is made to recall that Member States must not negotiate nor enter into any bilateral road transport agreements with the United Kingdom on matters falling under the scope of this Regulation and that they must not otherwise grant United Kingdom road operators any rights other than those granted under this Regulation (Article 5). Nevertheless, the respective competent authorities will be able to cooperate as necessary for the good implementation of the Regulation (Article 10), so that the least possible disturbance is brought to the management of the road haulage and coach and bus services that will continue to be provided after 31 December 2020.

Article 11 establishes the rules on the exercise of the delegation conferred on the Commission to adopt delegated acts to ensure that the rights enjoyed by Union road operators in the United Kingdom are equivalent to those granted to United Kingdom road operators, and that Union carriers are not discriminated against in the United Kingdom.

Article 12 establishes that this Regulation shall start to apply when the transition period established by the Withdrawal Agreement will end, if an agreement governing road transport with the United Kingdom has not entered into force and shall cease to apply at the latest on 30 June 2021. The Regulation will cease to apply at an earlier date, if an agreement governing road transport with the United Kingdom enters into force or is provisionally applied as the case may be, before that date. With the exception of the specific provisions applying in the border region of Ireland in the course of international regular and special regular services between Ireland and the United Kingdom in respect of Northern Ireland, the Regulation shall also cease to apply at an earlier date for the provisions which relate to passenger transport by road, if the Protocol to the Interbus Agreement regarding the international regular and special regular carriage of passengers by coach and bus enters into force for the Union and for the United Kingdom.

This act is part of a package of measures which the Commission is adopting.

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

This proposed Regulation is intended as a *lex specialis* that would address some of the consequences ensuing from the fact that Union rules regulating road freight transport and road passenger transport by bus and coach, in particular Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009, will no longer apply to the carriage of goods and passengers by road between, on the one hand the United Kingdom and, on the other hand the Union. The proposed terms are limited to what is necessary in this respect, so as to avoid disproportionate disruptions. They are intended to apply only for a limited period of time. This proposal is therefore fully consistent with the existing legislation and notably with Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009.

- **Consistency with other Union policies**

This proposal complements Union rules regulating the carriage of goods by road, in particular Regulation (EC) No 1072/2009 and Union rules regulating international coach and bus services, in particular Regulation (EC) No 1073/2009. The specific purpose and context of this Regulation, as well as its unilateral nature, necessarily require a restrictive approach in the granting of rights, as well as specific provisions intended to preserve equality of rights and a level playing field.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity**

Art. 1(2) of Regulation (EC) No 1072/2009 and Art. 1(2) of Regulation (EC) No 1073/2009 reserve competence to the Union for relevant agreements with third countries. In the absence of such an agreement, this proposed act aims at establishing basic connectivity subject to equivalent rights being granted by the United Kingdom. Such connectivity would be ensured in an equal manner for traffic to and from all points in the Union, which avoids distortions in the internal market. Action is therefore indispensable at Union level and the result could not be achieved through action at Member State level.

- **Proportionality**

The proposed Regulation is considered proportionate as it is capable of avoiding disproportionate disruptions in a manner that also ensures equal conditions of competition for Union road operators. It does not go beyond what is necessary to achieve this objective. This is the case, in particular, for the conditions under which the relevant rights are conferred, which *inter alia* pertain to the need that equivalent rights be conferred by the United Kingdom and to fair competition, and for the limitation of the regime in time.

- **Choice of the instrument**

Since the act governs matters closely related to Regulation (EC) No 1072/2009 and Regulation (EC) No 1073/2009 and is intended, like these Regulations, to ensure fully harmonised conditions of competition, it should take the form of a Regulation. This form also best responds to the urgency of the situation/context, since the time available before the end of the transition period (in the absence of an agreement covering carriage of goods and

passengers by road applicable by that date) is too short to allow for a transposition of provisions contained in a Directive.

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

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

This is not applicable due to the exceptional, temporary and one-off nature of the event necessitating this proposal which does not relate to the objectives of existing legislation.

- **Stakeholder consultations**

The challenges arising from the negotiations for an agreement between the Union and the United Kingdom and possible solutions have been raised by various stakeholders and Member State representatives.

The fact that the transition period set in the Withdrawal Agreement ends on 31 December 2020, the need to prepare for inevitable changes on 1 January 2021 and the possible additional measures to be envisaged in the event of no deal have been discussed with Member States representatives and various road transport stakeholders in the context of cross-cutting and specific meetings, held in Brussels and in the Member States.

A common theme in the presented views was the need for a regulatory intervention in order to maintain a certain degree of connectivity as regards the carriage of goods and passengers by road. When it comes to access to the Union road haulage and passenger transport market, stakeholders are not able to take their own contingency measures in order to mitigate the harmful impact of the possible absence of a partnership agreement.

Several Member States have in particular stressed the need to adopt EU level contingency measures in order to ensure basic connectivity between, on the one hand the Union and, on the other hand the United Kingdom in case of an absence of an agreement covering carriage of goods and passengers by road. They highlighted that the ECMT multilateral quota system does not represent a sufficient and adequate fall-back option considering its quantitative and qualitative limitations.

It was also highlighted that the Interbus Agreement covers only occasional services and that no adequate fall-back option exists for regular and special regular services considering that the Protocol to the Interbus Agreement covering regular and special regular passenger transport services is not expected to enter into force in time for the Union and for the United Kingdom. The particular need for cross-border coach and bus services between Ireland and the United Kingdom in respect of Northern Ireland was also highlighted.

These comments have been given due consideration in the preparation of the proposal.

- **Collection and use of expertise**

Several forms of assessment of the consequences of the United Kingdom's withdrawal for the road transport sector were shared with the Commission by relevant stakeholders.

These assessments conclude that the only fall-back available in the road haulage sector, namely the multilateral quota system of the European Conference of Ministers of Transport (ECMT), would be inadequate to cover the needs of the sector. The shortage of permits available for 2021 would likely cause significant disruptions and the bilateral flow of goods

and passengers by road may no longer be fully covered. More than 80% of road haulage operations between the United Kingdom and the Union are currently being carried out by hauliers established in the Union. It is in the interest of the Union to provide for a framework that does not unduly restrict bilateral road haulage operations.

Stakeholders also insisted on the need to ensure the continuity of regular and special regular coach and bus services between the Union and the United Kingdom.

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. No materially and legally different policy options are available other than the one proposed.

- **Fundamental rights**

This proposal has no consequence for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

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

Not applicable.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules ensuring basic road freight and road passenger connectivity following the end of the transition period mentioned in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

(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 Committee¹,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland (the ‘United Kingdom’) from the European Union and the European Atomic Energy Community (‘Withdrawal Agreement’)³ was concluded by the Union by Council Decision (EU) 2020/135⁴ and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of that agreement, ends on 31 December 2020. On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.⁵ As implied by the negotiation directives, the authorisation covers inter alia the elements needed to address comprehensively the road transport relationship with the United Kingdom after the end of the transition period. However, it is uncertain whether an agreement between the Union and the United Kingdom governing their future relationship in the area of transport of goods and passengers by road will have entered into force from the end of that period.

¹ OJ C , [...], p. .

² OJ C , [...], p. .

³ OJ L 29, 31.1.2020, p.7.

⁴ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Energy Community (OJ L 29, 31.1.2020, p.1).

⁵ OJ L 58, 27.2.2020, p. 53.

- (2) At the end of the transition period, and in the absence of any special provision, all rights and obligations ensuing from Union law in respect of market access, as established by Regulation (EC) No 1072/2009 of the European Parliament and of the Council⁶ and Regulation (EC) No 1073/2009 of the European Parliament and of the Council⁷ would be ended, insofar as the relationship between the United Kingdom and the Union and its Member States is concerned.
- (3) In such a situation, the international transport of goods and passengers by road between the Union and the United Kingdom will be severely disrupted.
- (4) Gibraltar is not included in the territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.
- (5) The multilateral quota system of the European Conference of Ministers of Transport (ECMT) is the only other available legal framework that could provide a basis for the carriage of goods by road between the Union and the United Kingdom. However, due to the limited number of permits currently available under the ECMT system and its limited scope as regards the covered types of road transport operations, the system is currently inadequate to fully address the road freight transport needs between the Union and the United Kingdom.
- (6) Serious disruptions are also expected to occur, including in respect of public order, in the context of road passenger transport services. After the end of the transition period, the Agreement on the international occasional carriage of passengers by coach and bus ("Interbus Agreement") is the only available legal framework that could provide a basis for the carriage of passengers by bus and coach between the Union and the United Kingdom. The United Kingdom will become a Contracting Party in its own right to the Interbus Agreement on 1 January 2021. However, the Interbus Agreement covers only occasional services and is, therefore, inadequate to address the disruptions related to international coach and bus services between the United Kingdom and the Union ensuing from the end of the transition period. A Protocol to the Interbus Agreement covering regular and special regular passenger transport services was negotiated and the United Kingdom is expected to ratify it as soon as possible. However, it is not expected that the Protocol enters into force in time to offer a viable alternative solution for the period immediately after the end of the transition period. Therefore, the available instruments do not address the needs of regular and special regular services of passenger transport by bus and coach between the Union and the United Kingdom.
- (7) In order to prevent ensuing serious disruptions, including in respect of public order, it is therefore necessary to establish a temporary set of measures enabling road haulage operators and coach and bus service operators licensed in the United Kingdom to carry goods and passengers by road between the United Kingdom and the Union, or from the territory of the United Kingdom to the territory of the United Kingdom transiting one or more Member States. In order to ensure a proper equilibrium between the United Kingdom and the Union, the rights thus conferred should be conditional upon the conferral of equivalent rights and be subject to certain conditions ensuring fair competition.

⁶ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

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).

- (8) Cross-border coach and bus services between Ireland and the United Kingdom in respect of Northern Ireland are of particular importance for the communities living in the border regions, in view of ensuring basic connectivity between communities inter alia as part of the Common Travel Area. Therefore, the picking up and setting down of passengers by United Kingdom coach and bus service operators should continue to be authorised in the border regions of Ireland in the course of international passenger transport services by coach and bus between Ireland and the United Kingdom in respect of Northern Ireland.
- (9) In order to reflect their temporary character, while not setting a precedent, the set of measures provided for in this Regulation should apply for a short period of time. In respect of road haulage operations, the limitation in time is made in view of possible arrangements for basic connectivity to be made in the ECMT system, and without prejudice to the entry into force of a future agreement governing the carriage of goods by road between the Union and the United Kingdom and future Union rules on transport. As far as passenger transport by bus and coach is concerned, the limitation in time is made to allow the Protocol to the Interbus Agreement on regular and special regular services to enter into force and to apply to the United Kingdom, either by the United Kingdom's ratification of or accession to that Protocol, and without prejudice to a possible future agreement on the matter between the Union and the United Kingdom.
- (10) In accordance with the principle of proportionality set out in Article 5 TEU, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (11) In view of the urgency entailed by the end of the transition period referred to above, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.
- (12) This Regulation should enter into force as a matter of urgency and apply from the day following the end of the transition period established by the Withdrawal Agreement unless an agreement governing road transport concluded with the United Kingdom has entered into force by that date. This Regulation should cease to apply as of the date of entry into force or on the date of provisional application of an international agreement governing road transport for both Parties. With the exception of the specific provisions applying in the border region of Ireland in the course of international regular and special regular services between Ireland and the United Kingdom in respect of Northern Ireland, the right to conduct regular and special regular coach and bus services should cease to apply on the date of the entry into force for the Union and for the United Kingdom of the Protocol to the Interbus agreement regarding the international regular and special carriage of passengers by coach and bus. This Regulation should in any event cease to apply on 30 June 2021.
- (13) Where necessary to address market needs, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission, to restore the equivalence of rights granted by the Union to United Kingdom road haulage operators and to United Kingdom coach and bus service operators, with those granted by the United Kingdom to Union road haulage operators and to Union coach and bus service operators, including where the rights granted by the United Kingdom are granted on the basis of the Member State of origin or otherwise are not equally available to all

Union operators, and to remedy occurrences of unfair competition to the detriment of Union road haulage operators and of Union coach and bus service operators.

- (14) The delegated acts should comply with the principle of proportionality, and their terms should therefore be commensurate to the problems raised through the failure to grant equivalent rights or through unfair conditions of competition. Suspension of the application of this Regulation should be envisaged by the Commission only in the most severe cases, where no equivalent rights are granted to Union road haulage operators or to Union coach and bus service operators by the United Kingdom or where the rights granted are minimal, or where the conditions of competition for United Kingdom road haulage operators or United Kingdom coach and bus service operators differ so much from those of Union operators that the provision of the services in question by Union operators is, for them, not economically viable.
- (15) When adopting the delegated acts, 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 accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. It should be ensured that any such delegated act does not unduly affect the proper functioning of the internal market.
- (16) To ensure that rights granted by the United Kingdom to Union road haulage operators and to Union coach and bus service operators equivalent to those granted by this Regulation to United Kingdom road haulage operators and United Kingdom coach and bus service operators are equally available to all Union operators, the scope of Regulations (EC) No 1072/2009 and (EC) No 1073/2009 should be temporarily extended. Those Regulations already cover the part of a journey between a Member State and a third country on the territory of any Member State crossed in transit. It is, however, necessary to ensure, in such case, that Regulation (EC) No 1072/2009 also applies to the part of the journey on the territory of the Member State of loading or unloading, and that Regulation (EC) No 1073/2009 applies to the part of the journey on the territory of the Member State of picking up or setting down passengers. Such an extension aims at ensuring that Union operators can perform cross-trade operations to or from the United Kingdom, as well as additional stops in their operation of passenger transport,

HAVE ADOPTED THIS REGULATION:

Article 1 *Scope*

This Regulation lays down temporary measures governing the carriage of goods by road, as well as the provision of regular and special regular passenger transport services by coach and bus between the Union and the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") following the end of the transition period referred to in Article 126 of the Withdrawal Agreement.

⁸ OJ L 123, 12.5.2016, p. 1.

Article 2
Definitions

For the purposes of this Regulation the following definitions apply:

- (1) "vehicle" means
 - (a) in respect of carriage of goods, a motor vehicle registered in the United Kingdom, or a coupled combination of vehicles the motor vehicle of which at least is registered in the United Kingdom, used exclusively for the carriage of goods, either owned by the undertaking, having been bought by it on deferred terms or having been hired, provided that, in the latter case, it meets the conditions set out in Directive 2006/1/EC of the European Parliament and of the Council⁹;
 - (b) in respect of the transport of passengers, a bus or coach;
- (2) "permitted carriage of goods" means:
 - (a) a laden journey undertaken by a vehicle from the territory of the Union to the territory of the United Kingdom, or vice versa, with or without transit through one or more Member States or third countries;
 - (b) a laden journey undertaken by a vehicle from the territory of the United Kingdom to the territory of the United Kingdom with transit through the territory of the Union;
 - (c) an unladen journey in conjunction with the carriage referred to in points (a) and (b);
- (3) "permitted carriage of passengers by coach and bus" means:
 - (a) a journey undertaken by a bus or coach to provide passenger transport from the territory of the Union to the territory of the United Kingdom, or vice versa, with or without transit through one or more Member States or third countries;
 - (b) a journey undertaken by a bus or coach to provide passenger transport from the territory of the United Kingdom to the territory of the United Kingdom with transit through the territory of the Union;
 - (c) a journey without carrying passengers in conjunction with the carriage referred to in points (a) and (b);
 - (d) the picking up and setting down of passengers in the border region of Ireland in the course of international regular and special regular services between Ireland and the United Kingdom in respect of Northern Ireland;
- (4) "border region of Ireland" means the counties of Ireland adjoining the land border between Ireland and the United Kingdom in respect of Northern Ireland;
- (5) "Union road haulage operator" means an undertaking, engaged in the carriage of goods by road, which holds a valid Community licence, in accordance with Article 4 of Regulation (EC) No 1072/2009;
- (6) "United Kingdom road haulage operator" means an undertaking established in the United Kingdom which is permitted to engage in the carriage of goods by road and

⁹ Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road (OJ L 33, 4.2.2006, p. 82).

holds a valid licence issued for the purposes of international carriage in respect of permitted carriage of goods;

- (7) "United Kingdom licence" means, when issued to a United Kingdom road haulage operator, a licence issued by the United Kingdom for the purposes of international carriage in respect of permitted carriage of good, and, when issued to a United Kingdom coach and bus service operator, a licence issued by the United Kingdom for the purposes of international carriage in respect of a permitted carriage of passengers by coach and bus;
- (8) "bus or coach" means a vehicle registered in the United Kingdom, which is, by virtue of its construction and equipment, suitable and intended to carry more than nine passengers including the driver;
- (9) "regular services" means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- (10) "special regular services" means regular services, regardless of who organises them, which provide for the carriage of specified categories of passengers, to the exclusion of other passengers;
- (11) "Union coach and bus service operator" means an undertaking engaged in the carriage of passengers by coach and bus which holds a valid Community licence in accordance with Article 4 of Regulation (EC) No 1073/2009;
- (12) "United Kingdom coach and bus service operator" means an undertaking established in the United Kingdom and which is permitted to engage in the carriage of passengers by coach and bus and holds a valid licence for the purposes of international carriage in respect of a permitted carriage of passengers by coach and bus;
- (13) "operator" means either a road haulage operator or a coach and bus service operator;
- (14) "competition law" means any law which addresses the following conduct, where it could affect road freight transport services or coach and bus services:
 - (a) conduct that consists in:
 - (i) agreements between road haulage operators or coach and bus service operators, respectively, decisions by associations of road haulage operators or by coach and bus service operators, and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;
 - (ii) abuses by one or more road haulage operators, or coach and bus service operators, of a dominant position;
 - (iii) measures taken or maintained in force by the United Kingdom in the case of public undertakings and undertakings to which the United Kingdom grant special or exclusive rights and which are contrary to point (i) or (ii);
 - (b) concentrations between road haulage operators or coach and bus service operators, respectively, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position;
- (15) "subsidy" means any financial contribution granted to an operator by the government or any other public body at any level, conferring a benefit, and including:

- (a) the direct transfer of funds, such as grants, loans or equity infusion, the potential direct transfer of funds, and the assumption of liabilities, such as loan guarantees, capital injections, ownership, protection against bankruptcy or insurance;
- (b) the foregoing or non-collection of revenue that is otherwise due;
- (c) the provision of goods or services other than general infrastructure, or the purchase of goods or services;
- (d) the making of payments to a funding mechanism or entrustment or direction to a private body to carry out one or more of the functions referred to in points (a), (b) and (c) which would normally be vested in the government or other public body and the practice in no real sense differs from practices normally followed by governments;

no benefit is deemed to be conferred by a financial contribution made by a government or other public body if a private market operator solely driven by the prospect of profit, in the same situation as the public body in question, would have made the same financial contribution;

- (16) "independent competition authority" means an authority which is in charge of the application and enforcement of competition law as well as the control of subsidies, and fulfils the following conditions:
 - (a) the authority is operationally independent and is appropriately equipped with the resources necessary to carry out its tasks;
 - (b) in performing its duties and exercising its powers, the authority has the necessary guarantees of independence from political or other external influence and it acts impartially;
 - (c) the decisions of the authority are subject to judicial review;
- (17) "discrimination" means differentiation of any kind without objective justification in respect of the supply of goods or services, including public services, employed for the operation of road freight transport services or of coach and bus services, or in respect of their treatment by public authorities relevant to such services;
- (18) "territory of the Union" means the territory of the Member States to which the TEU and the TFEU apply and under the conditions laid down in those Treaties.

Article 3

Right to conduct permitted carriage of goods

1. United Kingdom road haulage operators may, under the conditions laid down in this Regulation, conduct permitted carriage of goods.
2. Permitted carriage of goods of the following kinds may be conducted by natural or legal persons established in the United Kingdom, without a licence being required:
 - (a) carriage of mail as a universal service;
 - (b) carriage of vehicles which have suffered damage or breakdown;
 - (c) carriage of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3,5 tonnes;

- (d) carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters;
- (e) carriage of goods provided that:
 - (i) the goods carried are the property of the undertaking or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking;
 - (ii) the purpose of the journey is to carry the goods to or from the undertaking or to move them, either inside or outside the undertaking for its own requirements;
 - (iii) motor vehicles used for such carriage are driven by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;
 - (iv) the vehicles carrying the goods are owned by the undertaking, have been bought by it on deferred terms or have been hired, provided that, in the last case, they meet the conditions set out in Directive 2006/1/EC; and
 - (v) such carriage is no more than ancillary to the overall activities of the undertaking.

Article 4

Right to conduct regular and special regular coach and bus services

1. United Kingdom coach and bus service operators may, under the conditions laid down in this Regulation, conduct permitted carriage of passengers by coach and bus constituting regular and special regular services.
2. United Kingdom coach and bus service operators shall be in possession of an authorisation issued prior to the date of application of this Regulation in accordance with Articles 6 to 11 of Regulation (EC) No 1073/2009 to conduct permitted regular and special regular coach and bus services for hire and reward.
3. The authorisations that remain valid under paragraph 2 of this Article may continue to be used for the purposes specified in paragraph 1 of this Article if they have been renewed under the same terms and conditions, or altered only in terms of stops, fares or schedule, and subject to the rules and procedures of Articles 6 to 11 of Regulation (EC) No 1073/2009 for a period of validity not extending beyond 30 June 2021.
4. Permitted carriage of passengers by coach and bus carried out by natural or legal persons established in the United Kingdom for non-commercial and non-profit-making purposes may be conducted without a licence being required, where:
 - (a) the transport activity is only an ancillary activity for that natural or legal person; and
 - (b) the vehicles used are the property of that natural or legal person or have been obtained by that person on deferred terms or have been the subject of a long-term leasing contract, and are driven by a member of the staff of the natural or legal person, by the natural person himself, or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation.

Those transport operations shall be exempt from any system of authorisation within the Union, provided the person carrying out the activity is in possession of a national authorisation issued prior to the first day of application as set out in the first

subparagraph of Article 12(2) of this Regulation in accordance with Article 3(2) of Regulation (EC) No 1073/2009.

5. A change of vehicle, or an interruption of carriage to enable part of a journey to be made by another means of transport, shall not affect the application of this Regulation.

Article 5

Bilateral agreements or arrangements

The Member States shall neither negotiate nor enter into any bilateral agreements or arrangements with the United Kingdom on matters falling within the scope of this Regulation.

Without prejudice to existing multilateral arrangements, they shall not otherwise grant United Kingdom road haulage operators, or United Kingdom coach and bus service operators any rights other than those granted in this Regulation.

Article 6

Social and technical rules

In the course of a permitted carriage of goods or passengers by coach and bus in accordance with this Regulation, the following rules shall be complied with:

- (a) in respect of mobile workers and self-employed drivers, the requirements laid down by Member States in accordance with Directive 2002/15/EC of the European Parliament and of the Council¹⁰;
- (b) in respect of certain social legislation relating to road transport, the requirements set out in Regulation (EC) No 561/2006 of the European Parliament and of the Council¹¹;
- (c) in respect of tachographs in road transport, the requirements set out in Regulation (EU) No 165/2014 of the European Parliament and of the Council¹²;
- (d) in respect of drivers' initial qualification and periodic training, the requirements laid down by Member States in accordance with Directive 2003/59/EC of the European Parliament and the Council¹³;

¹⁰ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

¹¹ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

¹² Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

¹³ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).

- (e) in respect of the maximum authorised dimensions and weights of certain road vehicles, the requirements laid down by Member States in accordance with Council Directive 96/53/EC¹⁴;
- (f) in respect of the installation and use of speed limitation devices for certain categories of motor vehicles, the requirements laid down by Member States in accordance with Council Directive 92/6/EEC¹⁵;
- (g) in respect of the compulsory use of safety belts and child restraint systems in vehicles, the requirements laid down by Member States in accordance with Council Directive 91/671/EEC¹⁶;
- (h) in respect of the posting of workers, the requirements laid down by Member States in accordance with Directive 96/71/EC of the European Parliament and of the Council¹⁷;
- (i) in respect of passenger rights, the requirements set out in Regulation (EU) No 181/2011 of the European Parliament and of the Council¹⁸.

Article 7
Equivalence of rights

1. The Commission shall monitor the rights granted by the United Kingdom to Union road haulage operators and to Union coach and bus service operators and the conditions for their exercise.
2. Where the Commission determines that the rights granted by the United Kingdom to Union road haulage operators or to Union coach and bus service operators are not, de jure or de facto, equivalent to those granted to United Kingdom operators under this Regulation, or that those rights are not equally available to all Union road haulage operators or to all Union coach and bus service operators, it shall, without delay and in order to restore equivalence, adopt delegated acts in accordance with Article 11 to:
 - (a) suspend the application of Article 3(1) and (2) or Article 4(1) to (4) where no equivalent rights are granted to Union operators, or where the rights granted are minimal;
 - (b) establish limits to the allowable capacity available to United Kingdom road haulage operators, or United Kingdom coach and bus service operators, or to the number of journeys, or to both; or
 - (c) adopt operational restrictions related to the types of vehicles or conditions of circulation.

¹⁴ Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic (OJ L 235, 17.9.1996, p. 59).

¹⁵ Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27).

¹⁶ Council Directive 91/671/EEC of 16 December 1991 relating to the compulsory use of safety belts and child-restraint systems in vehicles (OJ L 373, 31.12.1991, p. 26).

¹⁷ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

¹⁸ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

Article 8
Fair competition

1. The Commission shall monitor the conditions under which Union operators compete with United Kingdom operators for the provision of road freight transport services and coach and bus services covered by this Regulation.
2. Where the Commission determines that, as a result of any of the situations referred to in paragraph 3 of this Article, the conditions referred to in paragraph 1 of this Article are appreciably less favourable than those enjoyed by United Kingdom operators, it shall, without delay and in order to remedy that situation, adopt delegated acts in accordance with Article 11 to:
 - (a) suspend the application of Article 3(1) and (2) or Article 4(1) to (4) where the conditions of competition for United Kingdom road haulage operators, or United Kingdom bus and coach service operators, differ so much from those applying to Union operators that the provision of services by the latter is not economically viable for them;
 - (b) establish limits to the allowable capacity available to United Kingdom road haulage operators, or United Kingdom bus and coach service operators, or to the number of journeys, or to both; or
 - (c) adopt operational restrictions related to the types of vehicles or conditions of circulation.
3. The delegated acts referred to in paragraph 2 shall, under the conditions specified in that paragraph, be adopted to remedy the following situations:
 - (a) the granting of subsidies by the United Kingdom ;
 - (b) failure by the United Kingdom to have in place or to effectively apply competition law;
 - (c) failure by the United Kingdom to establish or maintain an independent competition authority;
 - (d) the application by the United Kingdom of standards on the protection of workers, safety, security or the environment which are inferior to those laid down in Union law or, in the absence of relevant provisions in Union law, inferior to those applied by all Member States or, in any event, inferior to relevant international standards;
 - (e) the application by the United Kingdom of standards relating to the granting of licences to road haulage operators or to coach and bus service operators which are inferior to those laid down in Regulation (EC) No 1071/2009;
 - (f) the application by the United Kingdom of standards relating to the qualification and training of professional drivers which are inferior to those laid down in Directive 2003/59/EC;
 - (g) the application by the United Kingdom of road charging and taxation rules that diverge from the rules laid down in Directive 1999/62/EC of the European Parliament and of the Council¹⁹; and
 - (h) any form of discrimination against Union operators.

¹⁹ Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42).

4. For the purposes of paragraph 1, the Commission may request information from the competent authorities of the United Kingdom or from United Kingdom operators. Where they do not provide the information requested within the reasonable period prescribed by the Commission, or provide incomplete information, the Commission may proceed in accordance with paragraph 2.

Article 9

Extension of Regulations (EC) No 1072/2009 and (EC) No 1073/2009

1. In the context of the carriage of goods between the territory of the Union and the territory of the United Kingdom undertaken by a Union road haulage operator that relies on rights granted by the United Kingdom, as referred to in Article 7 of this Regulation, equivalent to those granted under this Regulation, Regulation (EC) No 1072/2009 shall apply to the part of the journey on the territory of the Member State of loading or unloading.
2. In the context of the carriage of passengers between the territory of the Union and the territory of the United Kingdom undertaken by a Union coach and bus service operator that relies on rights granted by the United Kingdom, as referred to in Article 7 of this Regulation, equivalent to those granted under this Regulation, Regulation (EC) No 1073/2009 shall apply to the part of the journey on the territory of the Member State of picking up or setting down.

Article 10

Consultation and cooperation

1. The competent authorities of the Member States shall consult and cooperate with the competent authorities of the United Kingdom as necessary in order to ensure the implementation of this Regulation.
2. Member States shall, upon request, provide the Commission, without undue delay, any information obtained pursuant to paragraph 1 of this Article or any other information relevant for the implementation of Articles 7 and 8.

Article 11

Exercise of the delegation

1. The power to adopt delegated acts referred to in Articles 7(2) and 8(2) shall be conferred on the Commission until 30 June 2021.
2. Before adopting a delegated act under Article 7(2) or 8(2), the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Article 12

Entry into force and application

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

2. This Regulation shall apply from the day following that on which Union law ceases to apply to and in the United Kingdom pursuant to Articles 126 and 127 of the Withdrawal Agreement.

However it shall not apply if an international agreement governing road transport, concluded between the Union and the United Kingdom, has entered into force by that date.

3. This Regulation shall cease to apply on the date of entry into force, or as the case may be, on the date of provisional application, of an international agreement governing road transport, concluded between the Union and the United Kingdom.

With the exception of the carriage of passengers by coach and bus referred to in Article 2(3)(d), the provisions of this Regulation applying to the carriage of passengers by coach and bus shall cease to apply on the date of the entry into force for the Union and for the United Kingdom of the Protocol to the Interbus agreement regarding the international regular and special carriage of passengers by coach and bus.

4. This Regulation shall in any case cease to apply at the latest on 30 June 2021.

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