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## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 November 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	COM(2017) 664 final
Subject:	Recommendation for a COUNCIL DECISION authorising the Commission to open negotiations with the Swiss Confederation to amend the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road with a view to enabling the participation of the Swiss Confederation in the European Union Agency for Railways

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Delegations will find attached document COM(2017) 664 final.

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Encl.: COM(2017) 664 final



Brussels, 15.11.2017  
COM(2017) 664 final

Recommendation for a

**COUNCIL DECISION**

**authorising the Commission to open negotiations with the Swiss Confederation to amend the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road with a view to enabling the participation of the Swiss Confederation in the European Union Agency for Railways**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

In line with Article 75(1) of Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004<sup>1</sup>, the European Union Agency for Railways (hereafter "the Agency") is open to participation by third countries, in particular by countries which have concluded agreements with the Union under which the countries concerned have adopted and are applying Union law, or equivalent national measures, in accordance with the procedure laid down in Article 218 TFEU, in the field covered by Regulation (EU) 2016/796, which is above all railway safety and railway interoperability.

The Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road of 21 June 1999 (hereinafter "the Land Transport Agreement") provides for a coordinated transport policy in the areas of road, rail and combined transport.

The cooperation with the Swiss Confederation has intensified and evolved positively over the years. The geographic position of the Swiss Confederation and its role as a major transit country make it an important partner in achieving a safe and interoperable railway area in Europe.

Through Decision No 1/2013 of the Joint Committee<sup>2</sup>, the Swiss Confederation committed to apply legal provisions equivalent to the relevant *acquis* in the area of rail interoperability and safety. Such legal provisions have been adopted and are effectively applied by the Swiss Confederation. The Swiss Confederation joins the meetings of the Interoperability and Safety Committee set up under Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast)<sup>3</sup> as observer. Swiss experts have attended technical meetings at the European Union Agency for Railways (the Agency) as observers.

Further intensifying the existing constructive cooperation between the Union and the Swiss Confederation is deemed to be mutually beneficial in terms of achieving a safe and interoperable railway area as well as ensuring that the Swiss Confederation continues to provide its expertise in interoperability and safety matters.

As such, it is appropriate to allow in principle the Swiss Confederation to participate in the Agency. The Swiss Confederation requested such a participation in 2013.

The detailed rules for the participation of the Swiss Confederation in the work of the Agency are to be laid out in arrangements, which should be made between the Agency and Swiss Confederation. These arrangements shall be signed by the Agency after having received the agreement of the Commission and of the Management Board, as stipulated in Article 75(2) of Regulation (EU) 2016/796.

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<sup>1</sup> OJ L 138, 26.5.2016, p. 1.

<sup>2</sup> OJ L 352 of 24.12.2013, p. 79.

<sup>3</sup> OJ L 138 of 26.5.2016, p. 44.

When making these arrangements, the Agency shall act in accordance with the relevant provisions of the agreement between the country concerned and the Union that is mentioned in Article 75(1) of Regulation (EU) 2016/796. In the case of the Swiss Confederation, this agreement is the Land Transport Agreement.

However, the Land Transport Agreement does currently not contain any provision in this regard. It is therefore proposed to insert a new Article in Title III of the Land Transport Agreement - which contains provisions related to international rail transport - that provides for the possible participation of the Swiss Confederation in the Agency.

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

This Recommendation is fully consistent with the common transport policy in general and the common railway policy in particular. It enables the participation of the Swiss Confederation in the Agency, in line with the provisions of Regulation (EU) 2016/796. Switzerland is located along important railway corridors, has a highly developed and competitive rail sector that is closely integrated in the European rail area.

- **Consistency with other Union policies**

This Recommendation is in line with the external policy of the Union. The relations between the Swiss Confederation and the Union are based on a set of agreements concluded in 1999, among which the Land Transport Agreement. The aim of the Land Transport Agreement is on the one hand to liberalize the access of the Contracting Parties to each other's transport market for the carriage of passengers and goods by road and rail and, on the other hand, at laying the basis for a coordinated transport policy.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal base is Article 218 of the Treaty on the Functioning of the European Union. It provides the framework for the procedures applying to the negotiation and conclusion of agreements between the Union and third countries.

- **Proportionality**

The present Recommendation proposes to the Council to authorise the Commission to open negotiations with the Swiss Confederation on an agreement amending the Land Transport Agreement of 21 June 1999. As the basic provisions of this agreement can only be amended by another bilateral agreement between the two Contracting Parties, the proposed measure is proportionate.

- **Choice of the instrument**

Article 218(3) of the Treaty on the Functioning of the European Union provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

## **3. BUDGETARY IMPLICATIONS**

The present recommendation which authorises the Commission to open negotiations with Switzerland is not expected to have immediate budgetary implications. Future arrangements between the Agency and the Swiss Confederation will be established on the basis of Article 75 of Regulation (EU) 2016/796 setting out detailed rules for participation of the

Swiss Confederation in the work of the Agency, in particular the nature and extent of such participation. This arrangement shall include provisions on financial contributions and staff.

#### **4. OTHER ELEMENTS**

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

Article 1 authorises the Commission to negotiate with the Swiss Confederation an amendment of the Land Transport Agreement for it to provide the basis for a future participation of the Swiss Confederation in the Agency.

Article 2 refers to the negotiation Directives in the Annex to this Recommendation.

Recommendation for a

## COUNCIL DECISION

**authorising the Commission to open negotiations with the Swiss Confederation to amend the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road with a view to enabling the participation of the Swiss Confederation in the European Union Agency for Railways**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas

- (1) The Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road of 21 June 1999 (hereinafter "the Land Transport Agreement") provides for a coordinated transport policy in the areas of road, rail and combined transport,
- (2) The cooperation with the Swiss Confederation has intensified and evolved positively over the years. The Swiss Confederation has adopted and effectively applied legal provisions equivalent to the relevant *acquis* in the area of rail interoperability and safety. The Swiss Confederation joins the meetings of the Interoperability and Safety Committee set up under Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast) as observer. Swiss experts have attended technical meetings at the European Union Agency for Railways (the Agency) as observers. Further intensifying the cooperation between the Union and the Swiss Confederation is deemed to be mutually beneficial in terms of achieving a safe and interoperable railway area as well as ensuring that the Swiss Confederation continues to provide its expertise in interoperability and safety matters.
- (3) Therefore negotiations should be opened with a view to concluding an agreement with the Swiss Confederation, amending the Land Transport Agreement with a view to enabling the participation of the Swiss Confederation in the Agency,

HAS ADOPTED THIS DECISION:

### *Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement with the Swiss Confederation amending the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road of 21 June 1999 with a view to enabling the participation of the Swiss Confederation in the European Union Agency for Railways.

*Article 2*

The negotiating Directives are set out in the Annex.

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*