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PROPOSAL

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

Delegations will find attached document COM(2018) 288 final.

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Proposal for a

COUNCIL DECISION

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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

The Interbus Agreement currently covers the international occasional carriage of passengers by coach and bus. On 5 December 2014, the Council authorised the Commission to open negotiations, on behalf of the European Union which is a Contracting Party to the Interbus Agreement, to extend the scope of the Agreement to regular and special regular carriage of passengers (subject to authorisation). The proposed text in the Attachment to this Council Decision is in line with the negotiating authorisation granted by the Council.

Three negotiating sessions were held with the Contracting Parties, in consultation with a Special Committee designated by the Council. The Member States were on each occasion invited to take part as experts.

In the meeting on 10 November 2017 the Contracting Parties present agreed to the text as stable and finalised, following some modifications introduced at the meeting. Three Contracting Parties from Eastern and South Eastern Europe were present (Montenegro, Republic of Moldova and Ukraine). Furthermore, one Contracting Party (Albania) had earlier expressed its positive view of the text in writing. A period for signature was agreed upon.

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

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

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

¹ OJ L 321, 26.11.2002, p. 11.

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

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

Apart from the European Union, the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Republic of Turkey and Ukraine are Contracting Parties to the Interbus Agreement and could sign and ratify/accede to the Protocol.

Experience gained from the existing agreements on road transport, for example, through partnerships between operators established in the serviced territories has been taken into account.

Subject to conditions, a Contracting Party or a European Union Member State may decide, without discrimination, that all regular and special regular road passenger services with origin or destination on its territory are subject to partnership arrangements between operators of the origin and destination of that regular or special regular service.

Operators established in the Contracting Parties or Union Member States crossed *en route* and with passengers being picked up and set down may join these partnerships, if they so decide.

The draft Protocol emphasises the European Union legislation (Regulation (EC) No 1071/2009⁽³⁾) regarding the penalties and most serious infringements as well as regarding the fulfilment of the four conditions for access to the profession of a road passenger transport operator (effective and stable establishment, good repute, financial standing and professional competence).

The draft Protocol introduces a Joint Committee to facilitate the management of the Protocol. The provisions of the Joint Committee set up under the Interbus Agreement apply *mutatis mutandis* to the Joint Committee under the Protocol. Consequently, the Joint Committee under the Protocol would deal, in particular with future non-substantial technical and legislative updates that are specific to the Protocol. The Joint Committee should also adopt its own Rules of Procedure. Furthermore, tasks of the Joint Committee deriving from the draft Protocol itself are those of receiving and distributing information, evaluation of the functioning of the Protocol every five years and measures to be taken in case of accession of a non-Union Contracting Party to the European Union.

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

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

³ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

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

The proposed Protocol is consistent with the Union's common transport policy. It encompasses the relevant parts of Regulation (EC) No 1073/2009⁽⁴⁾, as adapted for the purposes of an international agreement.

The draft Protocol provides for further harmonisation of the framework of international regular and special regular coach and bus services.

- **Consistency with other Union policies**

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

The draft Protocol is also consistent with existing agreements, such as the Customs Union and Pre-Accession Agreements, Association Agreements and is intended to provide the regulatory environment within which the EU and other Contracting Parties to the Interbus Agreement can have access to each other's international regular and special regular passenger transport markets under uniform rules.

- **Fiscal provisions**

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

- **Subsidiarity**

The Union's adherence to a Protocol extending the scope of an existing international multilateral Agreement where the Union is a Contracting Party can only be adopted by the Union itself, which is therefore exclusively competent in the matter.

The Protocol replaces the corresponding provisions in bilateral agreements for regular and special regular passenger services by road concluded between the Contracting Parties as well as between the Union Members States and non-EU Contracting Parties. However, the Protocol allows existing authorisations under bilateral agreements to be maintained for five years before being replaced by the provisions of the Protocol.

- **Proportionality**

The provisions of the draft Protocol are proportionate and non-discriminatory and they mutually apply to all Contracting Parties (including the EU). They intend to diminish possible unfair competition and eliminate decrepit vehicles and non-compliant operators from the roads.

⁴ Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules of access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).

The legislation referred to in the draft Protocol has already been adopted by the European Union.

- **Choice of the instrument**

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

3. COLLECTION AND USE OF EXPERTISE AND IMPACT ASSESSMENT / SIMPLIFICATION

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

The Commission has not carried out an impact assessment, nor used external expertise. Extending the Interbus Agreement to international regular and special regular passenger services by coach and bus would help to widen the geographical scope of implementation of the European Union acquis in the field of road passenger transport.

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

As hitherto, the operators can be SMEs with smaller fleets of coaches or buses or larger companies with larger fleets.

A Special Committee appointed by the Council was kept continuously informed of progress in the negotiations and Member States' experts participated in the negotiations with the non-EU Contracting Parties.

- **Simplification**

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

4. BUDGETARY IMPLICATIONS

None.

5. OTHER ELEMENTS

- **Evaluation and reporting arrangements**

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

- **Further procedure**

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

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

Specific provisions of the proposed Council Decision:

- Article 1 of the draft Council Decision provides, for the signing, on behalf of the Union, of the Protocol to the Interbus Agreement regarding the international regular and special regular carriage of passengers by coach and bus.
- Article 2 authorises the Council Secretariat General to establish the instrument of full powers to sign the Protocol, subject to its conclusion, for the person(s) indicated by the negotiator of the Protocol.
- Article 3 provides for the entry into force of the Council Decision.

Specific provisions of the Attachment to the proposed Council Decision:

- Article 1 defines the scope of the Protocol regarding international regular and special regular road passenger services with origin or destination in the Contracting Party where the operator is established and where the vehicles are registered or through which the service crosses with passengers being picked up and set down or through which the service passes without picking up or setting down passengers. Any form of cabotage is prohibited.
- Article 2 is a non-discrimination clause.
- Article 3 contains definitions.
- Article 4 refers to Annex 1 of the Interbus Agreement on the provisions applying to road passenger transport operators.
- Article 5 refers to Annex 2 of the Interbus Agreement on the technical conditions applying to vehicles.
- Article 6 contains provisions on international regular and special regular services subject to authorisation. *Inter alia*, it provides for the possibility for the Contracting Parties or European Union Member States to decide on making regular or special regular services between Contracting Parties subject to partnership arrangements between the operators of the origin and destination of the service. Operators of the Contracting Parties or Member States crossed *en route* with passengers being picked up and set down may join such partnerships, if they so decide.
- Article 7 states that Sections V and VI of the Interbus Agreement on social provisions and custom and fiscal provisions apply to the Protocol.
- Article 8 provides for the authorising authority that issues the authorisations, the recipients of authorisations, period of validity of an authorisation, items to be specified in an authorisation and the use of additional vehicles in temporary and exceptional circumstances.
- Article 9 defines the procedure for submitting an application for an authorisation.
- Article 10 provides for the authorisation procedure, including contacts between the relevant competent authorities, granting the authorisation and the sole reasons for possible rejection of an application.
- Article 11 foresees rules for the renewal or alteration of an authorisation.
- Article 12 provides for rules to lapse an authorisation.
- Article 13 provides for the obligations of transport operators.

- Article 14 states that the Contracting Parties should ensure that transport operators comply with the relevant provisions.
- Article 15 (in conjunction with Article 8(9)) lists the documents to be carried on the vehicle.
- Article 16 provides for the duration of the Protocol (5 years) with a tacit extension for successive periods of 5 years and periodic evaluations of the functioning of the Protocol.
- Article 17 refers to a 5-year transitional period for existing regular and special regular road passenger transport services in bilateral agreements, ratification or approval of the Protocol and Depositary of the Protocol, entry into force of the Protocol, denunciation and languages.
- Article 18 establishes a Joint Committee to manage the Protocol.
- Article 19 provides for the procedure when a non-Union Contracting Party of the Protocol accedes to the European Union.
- Article 20 opens the Protocol for signature and states that the Protocol can be acceded to or ratified only after having signed and acceded to or ratified the Interbus Agreement.
- Article 21 stipulates that after its entry into force, any Contracting Party to the Interbus Agreement may accede to the Protocol.
- Article 22 makes the Annexes to the Protocol an integral part thereto.
- Annexes 1 and 2 to the Protocol refer to Annexes 1 and 2 of the Interbus Agreement. Annex 1 in particular emphasises and repeats the European Union law regarding passenger rights and controls and penalties in the case of most serious infringements as well as the conditions for access to the profession.
- Annex 3 provides for a Model of application for an international regular or special regular service.
- Annex 4 provides for a Model of authorisation for an international regular or special regular passenger service.

Proposal for a

COUNCIL DECISION

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

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission ⁽¹⁾,

Whereas:

- (1) In accordance with Council Decision 2002/917/EC ⁽²⁾, the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) was concluded, on behalf of the Union, on 3 October 2002 and entered into force on 1 January 2003 ⁽³⁾.
- (2) On 5 December 2014 the Council authorised the Commission to open negotiations for a Protocol to the Interbus Agreement on the international regular and special regular carriage of passengers by coach and bus with the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Republic of Turkey and Ukraine.
- (3) The negotiations were successfully concluded during the meeting of the Contracting Parties to the Interbus Agreement on 10 November 2017.
- (4) The Protocol should facilitate the provision of regular and special regular services between the Contracting Parties to the Interbus Agreement and hence give rise to improved passenger transport links between them.
- (5) As regards general rules, notably the operation of the Joint Committee, and in order to facilitate its application, the draft Protocol largely mirrors the rules established in the Interbus Agreement.
- (6) In order for its benefits not to be excessively delayed and similarly to what the Interbus Agreement stipulates, the Protocol provides for its entry into force, for the Contracting Parties that have approved or ratified it, when four Contracting Parties, including the Union, have approved or ratified it.

¹ COM(2018)288

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

³ OJ L 321, 26.11.2002, p. 44.

- (7) Therefore, the Protocol to the Interbus Agreement on the international regular and special regular carriage of passengers by coach and bus should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Protocol to the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) regarding the international regular and special regular carriage of passengers by coach and bus is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Protocol to be signed is attached to this Decision.

Article 2

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

Article 3

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

Done at Brussels,

*For the Council
The President*