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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	16 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 291 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxxx of that Committee

Delegations will find attached document COM(2018) 291 final.

Encl.: COM(2018) 291 final



Brussels, 16.5.2018
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2018/0144 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxxx of that Committee

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal concerns the Council Decision establishing the position to be taken on the Union's behalf in the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxxx⁽¹⁾ of that Committee

2. CONTEXT OF THE PROPOSAL

2.1. Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement).

The Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement)⁽²⁾ ('the Agreement') aims to facilitate international occasional services by coach and bus between the Contracting Parties. The Agreement entered into force on 1 January 2003. The Agreement was later updated by the Decision of the Joint Committee No 1/2011⁽³⁾.

The European Union is a Contracting party to the Agreement⁽⁴⁾.

The Council adopted Council Decision (EU) 2016/1146 of 27 June 2016⁽⁵⁾ on the position to be adopted, on behalf of the European Union, within the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No x/xxxx (ex-1/2016) of that Committee.

2.2. The Joint Committee set up under the Interbus Agreement

In accordance with point (b) of Article 24(2) of the Interbus Agreement, the Joint Committee amends or adapts control documents and other models of documents established in the Annexes to the Agreement. In order to incorporate future measures taken within the Union, and in accordance with point (c) of Article 24(2) of the Interbus Agreement, the Joint Committee amends or adapts as Annex 1 regarding the conditions applying to road passenger transport operators as well as Annex 2 concerning technical standards applying to buses and coaches. In accordance with point (e) of Article 24(2) of the Interbus Agreement, the Joint Committee also amends or adapts the requirements concerning the social provisions.

The Joint Committee may adopt decisions only when two thirds of the Contracting Parties, including the European Union are represented in the Joint Committee meeting. In so far as the Joint Committee is required to take decisions, unanimity of the Contracting Parties represented is required. The European Union is a Contracting Party to the Agreement. The Member States assist the Commission in the Committee.

¹ The number and year of the forthcoming Joint Committee Decision is presented as 'x/xxxx'. The earlier nomination was '1/2016'.

² OJ L 321, 26.11.2002, p. 11.

³ OJ L 8, 12.1.2012, p. 38.

⁴ The Contracting Parties of the Interbus Agreement are the European Union, Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Republic of Turkey and Ukraine.

⁵ OJ L 189, 14.7.2016, p. 48.

2.3. The envisaged act of the Joint Committee established under the Interbus Agreement

During its next meeting in 2018, the Joint Committee is foreseen to adopt the Decision of the Joint Committee No x/xxxx.

The purpose of the envisaged act is to update the Agreement to technical and legislative progress since the end of 2009.

The envisaged act will become binding on the parties in accordance with Article 23 of the Agreement, which provides: the establishment of the Joint Committee and its voting rules.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

In the course of negotiations with the Contracting Parties, it became obvious that certain amendments to the Council position were needed. Those amendments are presented in point 5 below.

This Commission's new proposal to a Council Decision is intended to establish the Union's new position regarding draft Decision No x/xxxx of the Joint Committee set up under Article 23 of the Interbus Agreement. The previous Council Decision (EU) 2016/1146 should be repealed.

The proposed changes compared to the previous position are consistent with the existing policy since they mostly clarify the text and in one case grant a short transitional period for the non-EU Contracting Parties. As regards the transitional period of 3 years granted in respect of road passenger rights (Regulation (EU) No 181/2014 ⁽⁶⁾), it is relatively short and distortions of competition, if any, are expected to remain moderate.

The proposed Joint Committee Decision No x/xxxx in the Annex is consistent with the EU neighbourhood policy and external relations.

The draft Decision is also consistent with agreements, such as the Customs Union, Pre-Accession Agreements and Association Agreements.

The position of the Union as a Contracting Party to the Agreement can only be amended by the Union itself, which is therefore exclusively competent in the matter.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

The concept of *'acts having legal effects'* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

⁶ 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).

not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’⁷.

4.1.2. *Application to the present case*

The Joint Committee is a body set up by an agreement, namely the Interbus Agreement.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because it grants the Joint Committee powers to update the Agreement to legal and technical progress. The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU in conjunction with Article 91 TFEU. The legal base remains the same as for the original Council Decision (EU) 2016/1146.

4.2. **Substantive legal basis**

4.2.1. *Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. The envisaged act pursues one aim and, therefore, the Decision under Article 218(9) TFEU must be founded on a single substantive legal basis.

4.2.2. *Application to the present case*

The main objective and content of the envisaged act relate to transport policy.

Therefore, the substantive legal basis of the proposed decision is Article 91 TFEU.

4.3. **Conclusion**

The legal basis of the proposed Decision should be Article 91, in conjunction with Article 218(9) TFEU.

The legal base remains the same as for the original Council Decision (EU) 2016/1146.

5. **DETAILED LIST OF CHANGES IN RESPECT OF THE DRAFT JOINT COMMITTEE DECISION ATTACHED TO DECISION (EU) 2016/1146**

- (1) It is proposed that the references before the recitals mention the Joint Committee Decision No 1/2011, which has amended the Interbus Agreement. This has no incidences on the substance.
- (2) In Article 1 of the draft Joint Committee decision, a reference is added, regarding an additional Model of Declaration to be annexed to the Protocol, in respect of Regulation (EU) No 181/2011, concerning the rights of passengers in bus and coach transport. Such declaration would be made by Interbus Contracting Parties and related to Article 7 of that Regulation, which governs the amounts of compensation in the various situations it refers to.
- (3) To the same effect the heading and terms of the Annex to the draft Joint Committee decision refer to this same 'Model of Declaration'.

⁷ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

- (4) In point (1)(b) and the last subparagraph of point (3)(a)(iii) of the Annex to the draft Joint Committee Decision, the reference regarding the smart tachograph in the context of the AETR ⁽⁸⁾ is slightly adjusted without prejudice to the relationship between Regulation No 165/2014 and the AETR Agreement. The reference to Article 13 of the AETR Agreement is added concerning the transitional period set out therein, for the introduction of the digital tachograph under the AETR Agreement.
- (5) In the last paragraph of point 2 of the Annex to the draft Joint Committee Decision the words '*as far as it covers occasional services by coach and bus*' are deleted. They are superfluous since Regulation (EU) No 181/2011 covers both occasional and regular services and distinguishes the provisions respectively.
- (6) In this same matter, it seems appropriate to grant a 3-year transitional period for the non-EU Contracting Parties to reach the minimum compensation levels in Article 7 of the Regulation. In some cases, the minimum compensation levels in the Regulation exceed considerably those in use in some Contracting Parties other than the Union, and time is needed to reach the levels set out in the Regulation.
- (7) Point (6) of the Annex to the draft Joint Committee decision deals with a 'Model of Declaration concerning Article 4 and Annex 1'. Currently, this model is attached to the Agreement without being designated as an Annex. It is proposed to number it Annex 6 for reasons of clarity.
- (8) Point (6)(a) of the Annex to the draft Joint Committee decision deals with paragraph 1 of the same Model Declaration as worded in the draft Joint Committee Decision attached to Decision (EU) 2016/1146 and refers to 'three' conditions established in chapter I of Regulation (EC) No 1071/2009 ⁽⁹⁾. Initially, the fourth condition, regarding financial standing, was dealt with in point 2 of the Model Declaration. Since, according to the draft decision attached, this point is deleted in its entirety, the reference to three conditions in current point 1 (becoming the single point in the new text) is replaced by a reference to 'four' conditions (effective and stable establishment, good repute, financial standing and professional competence).
- (9) In respect of point (6)(b) of the Annex to the draft Joint Committee decision, it is proposed to delete paragraph 2 in full, and not only its second subparagraph of paragraph 2 as stated in Decision (EU) 2016/1146. That paragraph of the Model of Declaration in Annex 6 is related to the transitional period for financial standing until 1 January 2005 as established in Article 4 of the Agreement. That point in time has elapsed, and point 2 is to be deleted in its entirety. As a consequence, it is proposed to equally suppress the numbering of the Model of Declaration. .
- (10) A distinct 'Model of Declaration by Interbus Contracting Parties concerning Article 7 of Regulation (EU) No 181/2011' should be added as Annex 7 to the agreement, for the purposes of accompanying the transitional period of three years, referred to above.

⁸ European agreement concerning the work of crews of vehicles engaged in international road transport (AETR).

⁹ 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).

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend the Interbus Agreement on the international occasional carriage of passengers by coach and bus, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

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(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(9) thereof,

Having regard to the proposal from the European Commission¹,

Whereas:

- (1) The Interbus Agreement on the international occasional carriage of passengers by coach and bus ('the Agreement') was concluded by the Union by Council Decision of 3 October 2002² and entered into force on 1 January 2003.
- (2) Pursuant to Article 24(2) of the Agreement, the Joint Committee amends or adapts control documents and other models of documents established in the Annexes to the Agreement. In order to incorporate future measures taken within the Union, and in accordance with point (c) of Article 24(2) of the Agreement, the Joint Committee amends or adapts as Annex 1 regarding the conditions applying to road passenger transport operators as well as Annex 2 concerning technical standards applying to buses and coaches. In accordance with point (e) of Article 24(2) of the Agreement, the Joint Committee also amends or adapts the requirements concerning the social provisions.
- (3) The last update of Union legislation in the Agreement, which was introduced by Decision No 1/2011 of the Joint Committee³, takes into account Union acts adopted until the end of 2009.
- (4) The Interbus Joint Committee, during its meeting in 2018, is to adopt a Joint Committee Decision updating the Agreement to legislative and technical progress.

¹ COM(2018)291

² Council Decision 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 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 (OJ L 8, 12.1.2012, p. 38).

- (5) Council Decision (EU) 2016/1146⁴ established the European Union position on a draft Decision by the Interbus Joint Committee taking into account Union acts adopted until the end of 2015.
- (6) In the course of negotiations with the other Contracting Parties⁵ of the Agreement, it became obvious that some amendments needed to be introduced to the text approved by the Council. These concerned, in particular, the relationship between the Union rules in respect of the smart tachograph and the AETR and, given the situation in some Parties to the Interbus Agreement, a transitional period regarding the amounts of compensation established in Article 7 of Regulation (EU) No 181/2011⁶.
- (7) It is appropriate to repeal Council Decision (EU) 2016/1146 and establish a new position to be taken on the Union's behalf in the Joint Committee, as the Decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the meetings of in the Joint Committee set up under Article 23 of the Agreement on the international occasional carriage of passengers by coach and bus shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

Council Decision (EU) 2016/1146 is repealed.

Article 3

After their adoption, the Council Decision and the draft decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

⁴ Council Decision (EU) 2016/1146 of 27 June 2016 on the position to be adopted, on behalf of the European Union, within the Joint Committee established under the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement), as regards draft Decision No 1/2016 of that Committee (OJ L 189, 14.7.2016, p. 48).

⁵ The Contracting Parties of the Interbus Agreement are the European Union, Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Republic of Turkey and Ukraine.

⁶ 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).