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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 DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL empowering Germany to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of international road passenger transport services by coach and bus in the border regions between the two countries

Delegations will find attached document COM(2019) 221 final.

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Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

empowering Germany to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of international road passenger transport services by coach and bus in the border regions between the two countries

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On the subject matter

The border regions of Germany and Switzerland are closely integrated. Many Germans commute to work in Switzerland and vice versa and there is vibrant cross-border passenger traffic by road. A number of bus and coach services are offered which cross the border and thus connect the border regions of the two countries.

The two-way carriage of passengers and goods by road between Switzerland and the EU is regulated by the Land Transport Agreement between the EU and Switzerland¹ (hereinafter 'EU Agreement').

According to Article 20(1) of the EU Agreement, "*[t]ransport between two points situated on the territory of the same Contracting Party by carriers established in the territory of the other Contracting Party are not authorised under this Agreement*". This means that the carriers operating the passenger services which cross the border can only carry passengers across the border or within the territory of the Contracting Party they are established in. Bus and coach operators established in Switzerland may not carry passengers between two points on the German side of the border and operators established in the EU may not carry passengers between two points on the Swiss side of the border.

Article 20(2) of the EU Agreement allows pre-existing rights under bilateral agreements concluded between individual EU Member States and Switzerland that were in force at the time of conclusion of the EU Agreement to continue to be exercised, provided there is no discrimination between EU carriers and no distortion of competition. Cabotage in passenger transport by coach and bus may thus be possible in relations with Switzerland in case an agreement between an EU Member State and Switzerland in force on 21 June 1999 had foreseen this. In practice, none of the relevant bilateral agreements between Member States and Switzerland that were in force at that time did foresee cabotage rights for passenger transport by coach and bus.²

By letter dated 11 May 2017, Germany informed the Commission that it would appreciate if the Union was to empower it in line with Article 2(1) TFEU to amend its bilateral road transport agreement with Switzerland of 1953³ with a view to authorising cabotage operations during the provision of passenger transport services by coach and bus in the border region

¹ Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road, OJ L 114, 30.4.2002, p. 91.

² While the last sentence of Article 20(2) of the EU Agreement indicates that the corresponding rights are listed in Annex 8 to that Agreement, Annex 8 currently only lists the rights for the carriage of passengers in triangular traffic (pursuant to Article 19(2) of the EU Agreement), not any rights for cabotage.

In 2007, France amended its bilateral road transport agreement with Switzerland of 1951 to allow cabotage in the border regions of the two countries in the course of the provision of regular cross-border services between the two countries. France is right now the only country that has an agreement with Switzerland which allows cabotage in road passenger transport by coach and bus.

³ The text of the agreement is online retrievable under no. "0.741.619.136" in the Systematic Compilation of Federal Legislation (<https://www.admin.ch/gov/de/start/bundesrecht/systematische-sammlung.html>).

between the two countries. In the June 2018 meeting of the EU-Switzerland Inland Transport Committee, established by the EU Agreement, Switzerland informed the Commission that it was also interested in amending this agreement to that effect.

Cabotage in passenger transport by coach and bus can improve the efficiency of transport operations as it allows increasing the load factor of the vehicle. The EU is therefore generally favourable to the opening of the cabotage market, as it has done inside the EU in line with Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services⁴ (hereinafter 'Regulation (EC) No 1073/2009'). The authorisation of cabotage operations in the context of the provision of international passenger transport services by coach and bus in the border regions between Germany and Switzerland would allow the carriers involved to become more competitive and efficient.

On the EU competence

Article 3(2) of the Treaty on the Functioning of the European Union (TFEU) establishes that *"[t]he Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope"*.

Under Regulation (EC) No 1073/2009, cabotage operations within the Union may be conducted, under certain conditions, exclusively by carriers holding a Community licence. International commitments permitting other carriers, in particular carriers from third countries, to conduct such operations affect the above mentioned Regulation, within the meaning of Article 3(2) TFEU.⁵

Furthermore, such international commitments also affect the EU Agreement, in particular its Article 20. They are not authorised by paragraph 1 of that Article, except as set out in its paragraph 2.

Consequently, commitments such as those intended by Germany fall within the scope of the Union's exclusive competence. However, in accordance with Article 2(1) TFEU, the Union may empower Member States to act in areas where it has exclusive competence.

The aim of this proposal is to empower Germany to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of international road passenger transport services by coach and bus in the respective border regions of the two countries.

On the procedure

Cabotage operations within the Union by third country carriers, not holding a Community licence in accordance with Regulation (EC) No 1073/2009, affect the functioning of the internal market for coach and bus services, as established by the Union legislator through Regulation (EC) No 1073/2009. It is therefore necessary that any empowerment under Article

⁴ 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.

⁵ For a similar situation, cf. Opinion 2/15 of the Court of Justice of the European Union of 16 May 2017, EU:C:2017:376, paragraphs 189 and 190

2(1) TFEU be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU.

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

Currently, the EU Agreement does not authorise any cabotage operations in road passenger transport by coach and bus. However, Article 20(2) of the EU Agreement specifically allows the continued exercise of pre-existing cabotage rights provided there is no discrimination between EU carriers and there will be no distortion of competition. An agreement between Germany and Switzerland that would authorise cabotage operations during the provision of international passenger transport services by coach and bus would not alter the rights of Switzerland under the EU Agreement. Moreover, an amendment of the pre-existing bilateral agreement limited to cabotage in the respective border regions and, in respect of non-discrimination and undistorted competition, subject to conditions identical to those established in Article 20(2) of the EU Agreement, is in line with the policy underlying the exception set out in that provision.

Inside the EU, cabotage in road passenger transport by coach and bus is allowed in line with the provisions of Regulation (EC) No 1073/2009. Article 15 of that Regulation authorises cabotage operations within the EU: (1) for occasional services, (2) for special regular services provided that they are covered by a contract concluded between the organiser and the carrier, and (3) for regular services in the course of a regular international service except for transport services meeting the needs of an urban centre or conurbation or transport needs between it and the surrounding areas. The operation of that Regulation would be affected by the amendment of the bilateral road transport agreement as requested by Germany, but the affection would be sufficiently limited, in case the authorisation is given subject to the conditions described above.

- **Consistency with other Union policies**

An amendment of the existing bilateral road transport agreement between Germany and Switzerland with a view to authorising cabotage operations during the provision of international passenger transport services by coach and bus in the respective border regions of the two countries would not be inconsistent with any other Union policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Articles 2(1) TFEU and 91 TFEU.

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

The proposal falls under the exclusive competence of the Union.

- **Proportionality**

The sole objective of this proposal is to empower Germany, pursuant to Article 2(1) TFEU, to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations during the provision of international passenger transport services by coach and bus in the border regions between the two countries. Consequently, the

proposed Decision of the European Parliament and of the Council does not go beyond what is necessary to achieve this objective.

- **Choice of the instrument**

Cabotage operations within the Union by third country carriers, not holding a Community licence in accordance with Regulation (EC) No 1073/2009, affect the functioning of the internal market for coach and bus services, as established by the Union legislator through Regulation (EC) No 1073/2009. It is therefore necessary that any empowerment under Article 2(1) TFEU be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU. The proposed act, in its nature an individual empowerment, is to be adopted in response to a corresponding request made by Germany. It should therefore take the form of a decision, addressed to Germany. Consequently the proposed Decision of the European Parliament and of the Council represents an adequate instrument to empower Germany, in accordance with Article 2(1) TFEU, to act in this matter.

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

- **Stakeholder consultations**

This proposal is based on a request by Germany and concerns only this Member State. A similar request has been received by Italy which is subject to a parallel procedure.

4. BUDGETARY IMPLICATIONS

This proposal has no impact on the Union budget.

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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 Articles 2(1) and 91 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 Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In accordance with Article 20(1) of the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and by Road⁸ (hereinafter 'the EU Agreement'), the transport of passengers by coach and bus between two points situated on the territory of the same Contracting Party by carriers established in the territory of the other Contracting Party, known as cabotage, is not authorised.
- (2) In accordance with Article 20(2) of the EU Agreement, existing cabotage rights under bilateral agreements concluded between the Member States of the Union and Switzerland, which were in force when the EU Agreement was concluded, namely on 21 June 1999, may continue to be exercised provided that there is no discrimination between carriers established in the Union and no distortion of competition. The bilateral road transport agreement between Germany and Switzerland of 1953⁹ does not authorise cabotage operations during the provision of passenger transport services by coach and bus between the two countries. Therefore, the right to conduct such

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ L 114, 30.4.2002, p. 91.

⁹ Text retrievable under no. "0.741.619.136" in the Systematic Compilation of Swiss Federal Legislation.

operations as a result of a possible amendment to the agreement is not among the rights covered by Article 20(2) of the EU Agreement.

- (3) International commitments permitting carriers from Switzerland to conduct cabotage operations within the Union are liable to affect Article 20 of the EU Agreement, to the extent that this provision does not authorise such operations.
- (4) Furthermore, under Regulation (EC) No 1073/2009¹⁰, cabotage operations within the Union may be conducted, under certain conditions, exclusively by carriers holding a Community licence. International commitments permitting carriers from third countries, not holding such a licence, to conduct operations of that kind are liable to affect that Regulation.
- (5) Consequently, such commitments fall within the Union's exclusive external competence. Member States may negotiate or enter into such commitments only if empowered to do so by the Union in line with Article 2(1) TFEU.
- (6) Cabotage operations within the Union by third country carriers, not holding a Community licence in accordance with Regulation (EC) No 1073/2009, affect the functioning of the internal market for coach and bus services, as established by the Union legislator through Regulation (EC) No 1073/2009. It is therefore necessary that any empowerment under Article 2(1) TFEU be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU.
- (7) By letter dated 11 May 2017, Germany requested an empowerment by the Union to amend its road transport agreement with Switzerland with a view to authorising cabotage operations during the provision of passenger transport services by coach and bus in the respective border regions of the two countries.
- (8) Cabotage operations allow increasing the load factor of the vehicles which increases the economic efficiency of the services. It is therefore appropriate to authorise such operations in the course of the provision of international passenger transport services by coach and bus in the respective border regions of Switzerland and Germany. This could further strengthen the close integration of these border regions.
- (9) In order to ensure that the cabotage operations concerned do not excessively alter the functioning of the internal market for coach and bus services, as established by Regulation (EC) No 1073/2009, their authorisation should be subject to the conditions that there is no discrimination between carriers established within the Union and no distortion of competition.
- (10) For the same reason, cabotage operations should only be authorised in the border regions of Germany in the course of the provision of coach and bus services between Germany and Switzerland. To this effect, it is necessary to define the border regions of Germany within the meaning of this Decision in a manner that takes due account of the functioning of Regulation (EC) No 1073/2009, while allowing to increase the efficiency of the operations concerned,

¹⁰ OJ L 300, 14.11.2009, p. 88.

HAVE ADOPTED THIS DECISION:

Article 1

Germany is hereby empowered to amend its existing bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the respective border regions of Germany and Switzerland in the course of the provision of coach and bus services between the two countries, provided that there is no discrimination between carriers established in the Union and no distortion of competition.

As border regions of Germany within the meaning the first paragraph shall be considered the administrative districts of Freiburg and Tübingen in Baden-Württemberg and the administrative district of Swabia in Bavaria.

Article 2

Germany shall inform the Commission of the amendment of its bilateral road transport agreement with Switzerland pursuant to Article 1 of this Decision and notify the text of the said agreement. The Commission shall inform the Council and the European Parliament thereof.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels,

For the European Parliament
The President

For the Council
The President