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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 November 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on amending 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 and the Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco

Delegations will find attached document COM(2019) 622 final.

Encl.: COM(2019) 622 final



Brussels, 29.11.2019
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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on amending 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 and the Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

The Interbus Agreement on the international occasional carriage of passengers by coach and bus ⁽¹⁾ (hereafter “the Interbus Agreement”) entered into force on 1 January 2003. The European Union is a Contracting Party of the Interbus Agreement ⁽²⁾.

The Interbus Agreement currently covers the international occasional carriage of passengers by coach and bus.

On 5 December 2014 ⁽³⁾, the Council authorised the Commission to open negotiations, on behalf of the European Union, to extend the scope of the Interbus Agreement to regular and special regular carriage of passengers by coach and bus. Under the same authorisation from the Council, the Commission negotiated a Protocol extending the possibility of accession to the Interbus Agreement to the Kingdom of Morocco.

On the basis of a Commission proposal, the Council adopted on 16 July 2018 ⁽⁴⁾ Decisions on the signing of both Protocols.

Article 20(1) 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 (hereinafter ‘the Protocol on regular and special regular services’) and Article 2 of the Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco (hereinafter ‘the Protocol on the Kingdom of Morocco’) establish respectively that: ‘This Protocol shall be open for signature at Brussels from 16/07/2018 to 16/04/2019 at the General Secretariat of the Council of the European Union which shall act as the Depositary of the Protocol.’

Before the end of the period for signature, i.e. 16 April 2019, only one Contracting Party to the Interbus Agreement had signed the Protocol on regular and special regular services and four Contracting Parties to the Interbus Agreement had signed the Protocol on the Kingdom of Morocco.

The Protocol on regular and special regular services provides with regard to its entry into force that the respective provisions of the Interbus Agreement, in particular Articles 27 and 28

¹ OJ L 321, 26.11.2002, p. 13.

² In addition to the European Union, the following countries are also Contracting Parties of the Interbus Agreement: Republic of Albania, Bosnia and Herzegovina, Republic of Moldova, Montenegro, Republic of North Macedonia, Republic of Turkey and Ukraine, (hereafter referred to as “Interbus Contracting Parties”).

³ SGS14/15073 of 5 December 2014.

⁴ Council Decision (EU) 2018/1195 of 16 July 2018 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 (OJ L 214, 23.8.2018, p. 3).

Council Decision (EU) 2018/1211 of 16 July 2018 on the signing, on behalf of the European Union, of a Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco (OJ L 222, 3.9.2018, p. 1).

thereof, shall apply *mutatis mutandis*. According to these provisions, the Agreement shall be approved or ratified by the signatories in accordance with their own procedures and shall enter into force for the Contracting Parties that have approved or ratified it when four Contracting Parties, including the EU have approved or ratified it. The reference to signatories implies that in order for the Protocol on regular and special regular services to be able to enter into force, there would need to be at least four Contracting Parties that have signed and, consequently, approved or ratified it. As mentioned above, before the elapse of the period during which the Protocol on regular and special regular services was open for signature, only the Union had signed it.

The Protocol on the Kingdom of Morocco, for its part, envisages that it shall be signed, approved or ratified by the signatories in accordance with their own procedures. However, it does not provide for accession of Contracting Parties that have not signed and approved or ratified it. As mentioned above, before the elapse of the period during which the Protocol on the Kingdom of Morocco was open for signature not all of the Contracting Parties to the Interbus Agreement had signed it.

In light of the above, unless the periods of signature of the Protocols are prolonged or removed, no other Interbus Contracting Party could sign them and, consequently approve or ratify them and become also a Contracting Party of the Protocols. This would have serious consequences: the Protocol on regular and special regular services could not enter into force since it requires four ratifications while, the Protocol on the Kingdom of Morocco, signed and approved or ratified by four Contracting Parties to the Interbus Agreement, could enter into force but would only cover four out of eight current Contracting Parties which would make the governance of the whole Interbus Agreement unreasonably complex and practically hinder the possibility of the Kingdom of Morocco to enter in treaty relationship with all the Contracting Parties to the Interbus Agreement.

Furthermore, should the Kingdom of Morocco accede to the Interbus Agreement before all current Contracting Parties to the Interbus Agreement have ratified the Protocol on the Kingdom of Morocco, this would in practice be creating a new, smaller Interbus Agreement within the main Agreement (one with the Kingdom of Morocco and the Contracting Parties for which the Protocol would have entered into force, and another one with the current eight existing Contracting Parties without the Kingdom of Morocco). Such an arrangement is not foreseen in the Interbus Agreement and it would make the governance of the Interbus Agreement practically impossible. It would, therefore be appropriate to amend Article 4 of the Protocol on the Kingdom of Morocco to the effect that that Protocol should enter into force only after all Contracting Parties have approved or ratified it.

Since in the meantime one of the Contracting Parties to the Interbus Agreement has changed its official denomination, namely the Republic of North Macedonia, it might be opportune to also amend the two Protocols to refer to that Contracting Party with its new denomination.

The modification of the Protocols should not affect the validity of the signatures that have already taken place.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission has not carried out an impact assessment, nor used external expertise regarding the amendments suggested in this Recommendation since they do not concern the substance of the two Protocols.

3. LEGAL ELEMENTS OF THE RECOMMENDATION

- **Legal basis**

The legal basis is the Treaty on the Functioning of the European Union (TFEU), and in particular Article 218(3) and (4) TFEU.

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

Subsidiarity or proportionality are not concerned because first, the matter is of the exclusive external Union competence.

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

The proposed Recommendation is consistent with the Union's common transport and other external policies.

4. BUDGETARY IMPLICATION

None.

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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 Commission¹,

Whereas:

- (1) The conclusion of the Interbus Agreement on the international occasional carriage of passengers by coach and bus ('the Interbus Agreement') was approved on behalf of the Union by Council Decision of 3 October 2002². The Interbus Agreement entered into force on 1 January 2003.
- (2) The Council adopted Decision (EU) 2018/1195³ and Decision (EU) 2018/1211⁴ on 16 July 2018 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 (hereinafter 'the Protocol on regular and special regular services') and of a Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco (hereinafter 'the Protocol on the Kingdom of Morocco').
- (3) The Union signed the Protocol on regular and special regular services on 24 September 2018 and the Protocol on the Kingdom of Morocco on 11 April 2019.
- (4) In addition to the Union, Bosnia and Herzegovina, Montenegro and Turkey have signed the Protocol on the Kingdom of Morocco. As regards the Protocol regarding the international regular and special regular carriage of passengers by coach and bus, only the Union has signed it.
- (5) The period during which the two Protocols were opened for signature expired on 16 April 2019. In order to allow the current Contracting Parties to the Interbus Agreement that have not done so yet, to sign and conclude the two Protocols, it is appropriate that

¹ [ADD REFERENCE]

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 OJ L 214, 23.8.2018, p. 3.

⁴ OJ L 222, 3.9.2018, p. 1.

the Protocols are amended so that they do not provide for a specific period during which they are open for signature.

- (6) It would be appropriate to amend the Protocol on the Kingdom of Morocco to the effect that it enters into force after all current Contracting Parties of the Interbus Agreement have signed and ratified it.
- (7) One of the Contracting Parties to the Interbus Agreement has modified its official denomination, namely the Republic of North Macedonia, and it would be appropriate that this is taken into consideration in the texts of the Protocols.
- (8) The signatures of the Protocols that have taken place before 16 April 2019 should remain valid.
- (9) The Commission should, therefore, be authorised to negotiate, on behalf of the European Union, amendments to the Protocol on regular and special regular services and the Protocol on the Kingdom of Morocco,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the European Union, amendments to 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 and to the Protocol amending the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) by extending the possibility of accession to the Kingdom of Morocco to the effect that there is no limitation on the period during which the Protocols are open for signature, that the change in the denomination of one of the Contracting Parties to the Interbus Agreement is taken into account and that there is a new modality for the entry into force of the Protocol on the Kingdom of Morocco.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with [name of the Special Committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*