



A9-0006/2020

24.1.2020

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REPORT

on the 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
(COM(2019)0221 – C9-0001/2019 – 2019/0107(COD))

Committee on Transport and Tourism

Rapporteur: Markus Ferber

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2019)0221 – C9-0001/2019 – 2019/0107(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2019)0221),
 - having regard to Article 294(2) and Articles 2(1) and 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0001/2019),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to the opinion of the European Economic and Social Committee of 25 September 2019¹,
 - after consulting the Committee of the Regions,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A9-0006/2020),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 14, 15.1.2020, p. 118.

Amendment 1

Proposal for a decision Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles 2(1) and** 91 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article** 91 thereof,

EXPLANATORY STATEMENT

The decision is proposed in response to a request by Germany to empower it in line with Article 2(1) TFEU to amend its bilateral road transport agreement with Switzerland of 1953 with a view to authorising cabotage operations during the provision of passenger transport services by coach and bus in the border regions between the two countries. In the June 2018 meeting of the EU-Switzerland Inland Transport Committee, Switzerland informed the Commission that it was also interested in concluding such an agreement.

Proposed cabotage operations within the Union by third country carriers, not holding a Community licence, affect the functioning of the internal market for coach and bus services as established through Regulation (EC) No 1073/2009. They also affect the Land Transport Agreement between the EU and Switzerland, under which cabotage operations are not authorised, except in the case of pre-existing rights in bilateral agreements between Member States and Switzerland at the time of the conclusion of that Agreement (however, no agreements foresaw cabotage rights). Currently only France has such an agreement with Switzerland authorising cabotage (bilateral agreement amended in 2007).

Commitments 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. Such an empowerment must be given by the Union legislator in accordance with the legislative procedure referred to in Article 91 TFEU.

The Rapporteur notes that, under the Commission proposal, the authorisation is subject to the conditions that there is no discrimination between carriers established within the Union and no distortion of competition. There is also a clearly limited geographical scope of the cabotage operations, as they would only be permitted in the border regions of Germany specified in the text of the proposed decision - administrative districts of Freiburg and Tübingen in Baden-Württemberg and the administrative district of Swabia in Bavaria - in the course of the provision of coach and bus services between Germany and Switzerland.

The Rapporteur proposes to support the Commission proposal as it would improve cross-border public transport links between the two countries, make travel by bus and coach more accessible and attractive and provide more choice for the people living and working on both sides of the border.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Ms Karima Delli
Chair
Committee on Transport and Tourism
BRUSSELS

Subject: Opinion on the legal basis of the Commission 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 (COM(2019)0221 – C9-0001/2019 – 2019/0107(COD))

Dear Chair,

By letter dated 13 November 2019¹, your Committee requested, pursuant to Rule 40(2) of the Rules of Procedure, the opinion of the Committee on Legal Affairs concerning the appropriateness of the legal basis of the Commission Proposal for a decision 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.²

The committee considered the above question at its meeting of 9 January 2020.

I - Background

The Commission used Articles 2(1) and 91 TFEU as legal bases for the proposal. In its general approach, the Council amended the legal bases by deleting the reference to Article 2(1) TFEU.

II - The relevant Treaty Articles

The relevant provisions of the Treaty on the Functioning of the European Union read as follows:

Article 2

¹ D 315855/ JURI opinion on legal basis according to Rule 40 of the Rules of Procedure.

² 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 [2019/0107(COD)].

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

(...)

Article 3

(...)

2. The 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.

Article 91

(ex Article 71 TEC)

1. For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.

2. When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

III – CJEU case law on the choice of legal basis

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferred powers (Article 5 TEU) and determining the nature and scope of the Union's competence.³

According to the Court's settled case law, the choice of legal basis for a Union measure must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure.⁴

The choice of an incorrect legal basis may therefore justify the annulment of the act in

³ *Opinion 2/00*, ECLI:EU:C:2001:664, para 5.

⁴ See Case C-411/06 *Commission v Parliament and Council*, 8 September 2009, EU:C:2009:518, paragraph 45

question. In this context, an institution's wish for more active participation in the adoption of a given measure, the circumstances in which a measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the correct legal basis.⁵

If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.⁶

However, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases,⁷ provided that procedures laid down for the respective legal bases are not incompatible with and do not undermine the right of the European Parliament.⁸

IV – Aim and Content of the proposed measure

Under the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and by Road (hereinafter 'the EU Agreement'),⁹ cabotage in the form of transport of passengers by bus is not authorised.

Germany requested an empowerment by the Union to amend a bilateral agreement with Switzerland authorising such cabotage in the border regions of those countries.

The proposal consists in essence of a single provision whereby Germany is empowered to amend an agreement with Switzerland authorising cabotage operations in the 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.

V – Analysis and establishment of the appropriate legal basis

Concerning the choice of the legal basis, the Commission's explanatory memorandum indicates that:

“Article 3(2) of the [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”.

⁵ Judgment in *Commission v Council*, C-269/97, ECLI:EU:C:2000:183, para 44.

⁶ Judgment in *Commission v Council*, C-137/12, EU:C:2013:675, paragraph 53; C-411/06 EU:C:2009:518, paragraph 46 and the case-law cited therein; *Parliament v Council*, C 490/10, EU:C:2012:525, paragraph 45; *Parliament v Council*, C 155/07, EU:C:2008:605, paragraph 34.

⁷ Case C-211/01, *Commission v Council*, ECLI:EU:C:2003:452, para. 40; Case C-178/03 *Commission v European Parliament and Council*, ECLI:EU:C:2006:4, paras. 43-56.

⁸ Case C-300/89 *Commission v Council* ("Titanium dioxide"), ECLI:EU:C:1991:244, paras. 17-25; Case C-268/94 *Portugal v Council*, ECLI:EU:C:1996:461.

⁹ 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).

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.

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 agreement with Switzerland with a view to authorising cabotage operations in the provision of cross-border road passenger transport services by bus and coach in the respective border regions of the two countries.”¹⁰

On that ground, the Commission concluded that “*the legal basis for this proposal is Articles 2(1) TFEU and 91 TFEU.*”¹¹

(a) The appropriateness of Article 91 TFEU

Article 91 provides for legal bases in the transport policy field for transport by rail, road and inland waterway. In the light of the aim and content of the proposal, it is manifest that the proposal is linked to the functioning of the internal market in the transport sector. Thus, Article 91 TFEU appears to be an appropriate legal basis for the proposal.

(b) No possibility to add Article 2(1) TFEU as a legal basis

At the same time, Article 2(1) TFEU is not a legal basis. In fact, that provision does not confer any competence to the institutions for the adoption of a Union act. Therefore, it cannot be used as a legal basis.

For the sake of completeness, one may add that recital 5 of the proposals correctly recalls that “[*International commitments permitting carriers from third countries, not holding a licence, to conduct cabotage operations*] 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”.

In the present case, such empowerment is given via the legislative act adopted under the ordinary legislative procedure in accordance with Article 91 TFEU.

VI - Conclusion and recommendation

At its meeting of 9 January 2020 the Committee on Legal Affairs accordingly decided, by 21

¹⁰ See page 2 of the explanatory memorandum.

¹¹ See page 3 of the explanatory memorandum.

votes in favour, none against and 1 abstention¹², to recommend that the Committee on Transport and Tourism to retain Articles 91 as the only legal basis of the proposed decision.

Yours sincerely,

Lucy Nethsingha

¹² The following were present for the final vote: Lucy Nethsingha (Chair), Marion Walsmann (Vice-Chair), Ibán García Del Blanco (Vice-Chair), Raffaele Stancanelli (Vice-Chair), Franco Roberti (rapporteur for opinion), Gunnar Beck, Patrick Breyer, Geoffroy Didier, Angel Dzhambazki, Evelyne Gebhardt, Esteban González Pons, Jackie Jones, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Sabrina Pignedoli, Jiří Pospíšil, Liesje Schreinemacher, Marie Toussaint, Edina Tóth (for József Szájer pursuant to Rule 209(7)), Bettina Vollath and Axel Voss.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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						
References	COM(2019)0221 – C9-0001/2019 – 2019/0107(COD)						
Date submitted to Parliament	13.5.2019						
Committee responsible Date announced in plenary	TRAN 15.7.2019						
Committees asked for opinions Date announced in plenary	EMPL 15.7.2019						
Not delivering opinions Date of decision	EMPL 24.7.2019						
Rapporteurs Date appointed	Markus Ferber 26.8.2019						
Legal basis disputed Date of JURI opinion	JURI 9.1.2020						
Date adopted	21.1.2020						
Result of final vote	<table> <tr> <td>+: </td><td>47</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>2</td></tr> </table>	+:	47	–:	0	0:	2
+:	47						
–:	0						
0:	2						
Members present for the final vote	Scott Ainslie, Izaskun Bilbao Barandica, David Bull, Marco Campomenosi, Ciarán Cuffe, Johan Danielsson, Andor Deli, Anna Deparnay-Grunenberg, Ismail Ertug, Gheorghe Falcă, Giuseppe Ferrandino, Søren Gade, Isabel García Muñoz, Jens Gieseke, Kateřina Konečná, Elena Kountoura, Julie Lechanteux, Bogusław Liberadzki, Peter Lundgren, Benoît Lutgen, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Tilly Metz, Cláudia Monteiro de Aguiar, June Alison Mummery, Caroline Nagtegaal, Jan-Christoph Oetjen, Philippe Olivier, Dominique Riquet, Vera Tax, Barbara Thaler, Petar Vitanov, Elissavet Vozemberg-Vrionidi, Lucia Vuolo, Roberts Zīle, Kosma Złotowski						
Substitutes present for the final vote	Clotilde Armand, Leila Chaibi, Angel Dzhambazki, Markus Ferber, Maria Grapini, Pierre Karleskind, Andrey Novakov, Catherine Rowett, Henna Virkkunen						
Substitutes under Rule 209(7) present for the final vote	Tiziana Beghin, Elena Lizzi, Juozas Olekas, Tsvetelina Penkova						
Date tabled	24.1.2020						

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
ECR	Angel Dzhambazki, Peter Lundgren, Roberts Zīle, Kosma Złotowski
GUE/NGL	Leila Chaibi, Kateřina Konečná, Elena Kountoura
ID	Marco Campomenosi, Julie Lechanteux, Elena Lizzi, Philippe Olivier, Lucia Vuolo
NI	Tiziana Beghin
PPE	Andor Deli, Gheorghe Falcă, Markus Ferber, Jens Gieseke, Elżbieta Katarzyna Łukacijewska, Benoît Lutgen, Marian-Jean Marinescu, Cláudia Monteiro de Aguiar, Andrey Novakov, Barbara Thaler, Henna Virkkunen, Elissavet Vozemberg-Vrionidi
RENEW	Clotilde Armand, Izaskun Bilbao Barandica, Søren Gade, Pierre Karleskind, Caroline Nagtegaal, Jan-Christoph Oetjen, Dominique Riquet
S&D	Johan Danielsson, Ismail Ertug, Giuseppe Ferrandino, Isabel García Muñoz, Maria Grapini, Bogusław Liberadzki, Juozas Olekas, Tsvetelina Penkova, Vera Tax, Petar Vitanov
VERTS/ALE	Scott Ainslie, Ciarán Cuffé, Anna Deparnay-Grunenberg, Tilly Metz, Catherine Rowett

0	-

2	0
NI	David Bull, June Alison Mummery

Key to symbols:

+ : in favour

- : against

0 : abstention