Decision (EU) 2020/853 of the European Parliament and of the Council of 18 June 2020 empowering Germany to amend its bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of the provision of international road passenger transport services by coach and bus in the border regions between the two countries

DECISION (EU) 2020/853 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 June 2020

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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 Article 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 Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

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 Road[(3)] (the 'EU#Swiss 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#Swiss Agreement, existing cabotage rights under bilateral agreements concluded between Member States and Switzerland which were in force when the EU#Swiss 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 Switzerland and Germany of 17 December 1953[(4)] (the 'Swiss#German Agreement') does not authorise cabotage operations in the course of the provision of road passenger transport services by coach and bus between the two countries. Therefore, the right to conduct such operations is not among the rights covered by Article 20(2) of the EU#Swiss Agreement and listed in Annex 8 thereto.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2020/853 of the European Parliament and of the Council. (See end of Document for details)*

(3) International commitments permitting carriers established in Switzerland to conduct cabotage operations within the Union are liable to affect Article 20 of the EU#Swiss Agreement, since that Article does not authorise such operations.

(4) Regulation (EC) No 1073/2009 of the European Parliament and of the Council[(5)] permits cabotage operations within the Union to be conducted exclusively by carriers holding a Community licence, under certain conditions. International commitments permitting third#country carriers, not holding such a licence, to conduct operations of that kind are liable to affect that Regulation.

(5) Consequently, such international 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 accordance with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU).

(6) Cabotage operations carried out within the Union by third#country carriers not holding a Community licence as provided for in Regulation (EC) No 1073/2009 affect the functioning of the internal market for coach and bus services, as established by that Regulation. It is therefore necessary that an 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 of 11 May 2017, Germany requested an empowerment from the Union to amend the Swiss#German Agreement with a view to authorising cabotage operations in the course of the provision of road passenger transport services by coach and bus in the border regions of Germany and Switzerland.

(8) Cabotage operations allow the load factor of the vehicles to be increased, which increases the economic efficiency of the passenger transport services by coach and bus. It is therefore appropriate to authorise such operations in the course of the provision of road passenger transport services by coach and bus between Germany and Switzerland in the border regions of the two countries. This could further strengthen the close integration of those 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, the authorisation of cabotage operations should be conditional upon there being no discrimination between carriers established within the Union and there being 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 road passenger transport services by coach and bus between Germany and Switzerland. To this effect, it is necessary to define the border regions of Germany for the purposes of this Decision in a manner that takes due account of Regulation (EC) No 1073/2009, while allowing the efficiency of the operations concerned to be increased,

HAVE ADOPTED THIS DECISION: