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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2020/2222 of the European Parliament and of the Council with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link

Delegations will find attached document COM(2021) 402 final.

Encl.: COM(2021) 402 final



Brussels, 13.7.2021
COM(2021) 402 final

2021/0228 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU) 2020/2222 of the European Parliament and of the Council
with regard to the cross-border infrastructure linking the Union and the United
Kingdom through the Channel Fixed Link**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In order to ensure the connectivity between the Union and the United Kingdom after the end of the transition period referred to in Article 126 of the Withdrawal Agreement, the Union legislator considered it essential that rail undertakings established and licensed in the United Kingdom could continue to operate through the Channel Fixed Link¹.

To this end, and in order to enable the Member State concerned to take the necessary steps to ensure connectivity in accordance with Union law, Regulation (EU) 2020/2222 of the European Parliament and of the Council² extended until 30 September 2021 the period of validity of the licences issued by the United Kingdom under Directive 2012/34/EU³ to rail operators established in its territory, as well as that of the safety certificates issued to those undertakings under Directive 2004/49/EC⁴ by the Intergovernmental Commission established pursuant to Article 10 of the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of a channel fixed link, signed at Canterbury on 12 February 1986 (the ‘Treaty of Canterbury’).

Regulation (EU) 2020/2222 also extended the period of validity of the safety authorisation of the Channel Fixed Link infrastructure manager issued by the said Intergovernmental Commission until 28 February 2021.

On 10 November 2020, France notified the Commission of its intention to enter into negotiations on a cross-border agreement with the United Kingdom pursuant to Article 14(3) of Directive 2012/34/EU with the objective to allow rail undertakings established and licensed in the United Kingdom to use the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link until the border-crossing station and terminal of Calais-Fréthun (France), without obtaining a licence under Directive 2012/34/EU from a Union licensing authority. Following the conclusion of the negotiation of this cross-border agreement, the draft text was notified to the Commission on 1 June 2021.

On 15 June 2021, France notified the Commission of its intention to enter into negotiations on a cross-border agreement with the United Kingdom pursuant to Article 10(9) of Directive (EU) 2016/798⁵ with the objective to allow the said rail undertakings to use the said infrastructure until the said border-crossing station and terminal, without obtaining a Union single safety certificate in accordance with that Directive. The negotiation of this cross-border agreement is expected to be completed in the course of August 2021.

¹ The railway undertakings operating through the Channel Fixed Link are Eurostar International Limited (EIL), DB Cargo UK and GB Railfreight.

² Regulation (EU) 2020/2222 of the European Parliament and of the Council of 23 December 2020 on certain aspects of railway safety and connectivity with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link (*OJ L 437, 28.12.2020, p. 43*)

³ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (*OJ L 343, 14.12.2012, p. 32*)

⁴ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (*OJ L 164, 30.4.2004, p. 44, no longer in force*)

⁵ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (*OJ L 138, 26.5.2016, p. 102*)

Additional time is needed to complete the formal procedures required under the law of both Parties for the provisional application or entry into force of these agreements. These procedures are expected to extend for six months after the expiry, on 30 September 2021, of the contingency measures currently in force.

The two cross-border agreements are appropriate instruments to achieve the objectives of Regulation (EU) 2020/2222, namely to ensure the continuity of the operations of the rail operators concerned. However, unless their period of validity is extended so as to allow for these agreements to enter into force or be provisionally applied, the licences and safety certificates of the above mentioned rail operators will cease to be valid on 30 September 2021 and operations will come to a halt, causing significant disruption in the transport of passengers and freight across the Channel Fixed Link.

It is therefore in the Union's interest to extend the period of validity of those certificates and licences until 31 March 2022.

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

This proposal is intended as a *lex specialis* that would address some of the consequences ensuing from the fact that Union law is no longer applicable to the United Kingdom and that unless otherwise provided, the certificates and authorisations issued by the Intergovernmental Commission will cease to be valid under Union law as of 30 September 2021. The same applies to the operating licenses issued by the licensing authority of the United Kingdom. The proposed extension is strictly limited to what is necessary in this respect, so as to avoid disruptions of cross-border operations and is intended to apply only for a limited period of time. The general provisions of Directive (EU) 2016/798, which repealed Directive 2004/49/EC, as well as Directive 2012/34/EU, will otherwise continue to apply. This proposal is thus fully consistent with the existing legislation.

- **Consistency with other Union policies**

The proposal concerns railway safety and connectivity, complementing Directive (EU) 2016/798, which repealed Directive 2004/49/EC as well as Directive 2012/34/EU. The intention is to ensure continuity of the cross-border rail services with the United Kingdom beyond 30 September 2021.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU).

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

As the proposal complements existing Union law, with provisions facilitating their orderly application following the withdrawal of the United Kingdom from the Union, its objective can only be achieved through an act at the level of the Union.

- **Proportionality**

Regulation (EU) 2020/2222 lays down measures to safeguard the continuity of the EU cross-border rail services with the United Kingdom.

The proposed extension of the duration of those measures, without otherwise altering their scope or content, does not go beyond what is strictly necessary to allow the cross-border agreements negotiated by the Member State concerned to enter into force, thus ensuring the

achievement of the above-mentioned objective. The measure is therefore considered proportionate.

- **Choice of the instrument**

This being an amending instrument, it must take the form of the instrument it amends, namely Regulation (EU) 2020/2222. Therefore, a regulation of the European Parliament and Council appears to be the only adequate form of legal act.

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

- **Ex-post evaluations/fitness checks of existing legislation**

This is not applicable as the proposed measures merely ensure the achievement of the objectives of Regulation (EU) 2020/2222 namely to mitigate the consequences of an exceptional, temporary and one-off event.

- **Stakeholder consultations**

The potential challenges to be caused by the end of the application period of Regulation (EU) 2020/2222 as set in Article 8 thereof call for an extension of the measures, which have been requested by France involving in the process the concerned railway undertakings.

The urgency for Union action calls for immediate regulatory intervention in order to ensure continuity of operations in the Channel Fixed Link, which poses major limitations on the possibility to consult publicly on the proposal.

- **Collection and use of expertise**

This information has been subject to in-house legal and technical analysis to ensure the proposed measure achieves its intended purpose, and is limited to what is strictly necessary.

- **Impact assessment**

An impact assessment is not required, due to the exceptional nature of the situation and the short-term nature of the proposed measure. No materially and legally different policy options are available other than the one proposed.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable due to the short-term nature of the proposed measure.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EU) 2020/2222 applies to:

- (a) safety authorisations issued by the Intergovernmental Commission under Article 11 of Directive 2004/49/EC to the infrastructure manager of the Channel Fixed Link;
- (b) safety certificates issued by the Intergovernmental Commission under Article 10 of Directive 2004/49/EC to railway undertakings established in the United Kingdom and using the Channel Fixed Link.
- (c) licences issued under Chapter III of Directive 2012/34/EU to railway undertakings established in the United Kingdom and using the cross-border infrastructure linking the Union and the United Kingdom through the Channel tunnel.

In accordance with Article 3(1) of Regulation (EU) 2020/2222, safety authorisations remained valid for two months from the date of application of the Regulation (thus until 28 February 2021).

The proposed Regulation aims at extending contingency measures regarding the validity of safety certificates and licences. The proposed extension period is 31 March 2022.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2020/2222 of the European Parliament and of the Council with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link

(Text with EEA relevance)

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(1) 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 order to ensure the connectivity between the Union and the United Kingdom after the end of the transition period referred to in Article 126 of the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community⁸, and the continuity of the operations of the rail undertakings established and licensed in the United Kingdom which operate in the Channel Fixed Link, Regulation (EU) 2020/2222 of the European Parliament and of the Council⁹ extended until 30 September 2021 the period of validity of the licences issued by the United Kingdom under Directive 2012/34/EU of the European Parliament and of the Council¹⁰ to rail operators established in its territory, as well as that of the safety certificates issued to those undertakings under Directive 2004/49/EC of the European Parliament and of the Council¹¹ by the Intergovernmental

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7.

⁹ Regulation (EU) 2020/2222 of the European Parliament and of the Council of 23 December 2020 on certain aspects of railway safety and connectivity with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link, OJ L 437, 28.12.2020, p. 43.

¹⁰ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, OJ L 343, 14.12.2012, p. 32

¹¹ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, OJ L 164, 30.4.2004, p. 44, no longer in force

Commission established pursuant to Article 10 of the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of a channel fixed link, signed at Canterbury on 12 February 1986.

- (2) Decision (EU) 2020/1531 of the European Parliament and of the Council¹² empowers France and the United Kingdom to conclude an international agreement supplementing the Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link ('the Treaty of Canterbury') as regards the application of railway safety rules within the Channel Fixed Link. However, no agreement has been concluded yet or is likely to be concluded soon.
- (3) In those circumstances, France has negotiated with the United Kingdom a cross border agreement pursuant to Article 14 of Directive 2012/34/EU regarding safety certificates. France also negotiated such an agreement regarding railway undertakings licences, as notified to the Commission on 10 November 2020 and underlined in recital (9) of Regulation (EU) 2020/2222. The internal procedures required under the law of both Parties for the provisional application or entry into force of those agreements are expected to take six months to be completed after the expiry, on 30 September 2021, of the measures provided for in Regulation (EU) 2020/2222.
- (4) Without prejudice of the assessment to be made and the decisions to be taken by the Commission pursuant to Article 14(4) and (5) of Directive 2012/34/EC, those two cross-border agreements are appropriate instruments to ensure the connectivity between the Union and the United Kingdom. However, unless the period of validity of the licences and safety certificates referred to in recital (1) is extended so as to allow for those agreements to enter into force or be provisionally applied, operations of the rail undertakings concerned in the Channel Fixed Link will come to a halt on 30 September 2021, causing significant disruption in the transport of passengers and freight between the Union and the United Kingdom.
- (5) It is therefore in the Union's interest to extend the period of validity of those certificates and licences until 31 March 2022 by amending Regulation (EU) 2020/2222.
- (6) In view of the urgency entailed by the expiry of the measures provided for in Regulation (EU) 2020/2222, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.
- (7) Since the objective of this Regulation, namely to amend Regulation (EU) 2020/2222 and to lay down provisional measures on certain aspects of railway safety and connectivity with regard to the end of the transition period, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In

¹² Decision (EU) 2020/1531 of the European Parliament and of the Council of 21 October 2020 empowering France to negotiate, sign and conclude an international agreement supplementing the Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, OJ L 352, 22.10.2020, p. 4

accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(8) This Regulation should enter into force as a matter of urgency,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2020/2222 is amended as follows:

(1) Article 3 is amended as follows:

(a) the first sentence of paragraph 2 is replaced by the following:

‘The safety certificates referred to in point (b) of Article 1(2) shall remain valid for fifteen months from the date of application of this Regulation.’

(b) the first sentence of paragraph 3 is replaced by the following:

‘Licences referred to in point (c) of Article 1(2) shall remain valid for fifteen months from the date of application of this Regulation.’

(2) In Article 8, paragraph 3 is replaced by the following:

‘3. This Regulation shall cease to apply on 31 March 2022.’

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President