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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 20 June 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 328 final |
| Subject: | Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL empowering the French Republic to negotiate, sign and conclude an international agreement on the safety and interoperability requirements within the Channel Fixed Link |

Delegations will find attached document COM(2023) 328 final.

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EUROPEAN
COMMISSION

Brussels, 20.6.2023
COM(2023) 328 final

2023/0192 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**empowering the French Republic to negotiate, sign and conclude an international
agreement on the safety and interoperability requirements within the Channel Fixed
Link**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Channel Fixed Link is a unique railway link involving a single, complex engineering structure situated partly in the territory of the French Republic and partly in a third country, namely the United Kingdom.

It requires coherent rail safety and interoperability requirements across the whole Channel Fixed Link, as well as cooperation between the French and the British national safety authorities.

To ensure the safe and efficient operation of the Channel Fixed Link, the French Republic has requested, on 23 March 2023, an empowerment to negotiate and conclude with the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') an international agreement on the safety and interoperability requirements within the Channel Fixed Link.

This agreement would also partly transpose the Fourth Railway Package technical pillar (Directives (EU) 2016/797 and (EU) 2016/798 of the European Parliament and of the Council¹) for the part of the Channel Fixed Link under the French Republic's jurisdiction.

It is therefore appropriate to authorise the French Republic to negotiate, sign and conclude an international agreement with the United Kingdom on the safety and interoperability requirements in the Channel Fixed Link.

The agreement should ensure that the part of the Channel Fixed Link under the French Republic's jurisdiction are governed by Union law, with the Court of Justice exclusively competent to interpret them. Hence nothing in this agreement will put into question the principle of primacy of Union law. The principle of direct effect, where applicable, should also be respected. The independence of the European Union Agency for railways and of the French national safety authority should be ensured.

The agreement should also contain a specific mechanism to allow for its amendment in case of future changes of the Union law, in particular of Directives (EU) 2016/797 and (EU) 2016/798. It should also contain an empowerment for the Commission allowing it to authorise the French Republic to amend the agreement to adapt it in case of amendments to such Directives. As regards the part of the Channel Fixed Link under the United Kingdom's jurisdiction, the agreement should ensure coherence of the safety and interoperability requirements, thereby contributing to safety and interoperability in the Channel Fixed Link.

The French Republic had already requested a Union empowerment in 2020 to negotiate an agreement with the United Kingdom that would have ensured the unified and dynamic application of Union law, and in particular Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798, over the entire Channel Fixed Link (including the part under United Kingdom's jurisdiction) supervised by a binational authority, namely the Intergovernmental Commission assisted by its Safety Authority put in place by the Treaty of

¹ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union, OJ L 138, 26.5.2016, p. 44

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

Canterbury. The French Republic was empowered to do so by Decision (EU) 2020/1531². The negotiations under the conditions laid down in that decision have so far not led to an agreement satisfactory for both Parties. Therefore, an alternative empowerment is proposed. Since an agreement concluded on the basis of Decision (EU) 2020/1531 would provide a more unified and thus efficient way of ensuring safety and interoperability over the entire Channel Fixed Link, this option should not be ruled out and the proposed Decision should thus be without prejudice to Decision (EU) 2020/1531.

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

The above-mentioned objectives are fully consistent with existing policy in the area of railway safety and interoperability, as well as with Decision (EU) 2020/1531 for the reasons stated above.

- **Consistency with other Union policies**

An international agreement on the safety and interoperability requirements within the Channel Fixed Link will not result in inconsistencies with any other Union policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

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

The proposal falls under the exclusive competence of the Union.

- **Proportionality**

The objective of the proposal is to authorise, pursuant to Article 2(1) TFEU, the negotiation of an international agreement on the safety and interoperability requirements within the Channel Fixed Link ensuring uniform application of rail safety and interoperability requirements across the whole Channel Fixed Link.

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**

The objective sought is to ensure coherent safety and interoperability requirements across the entire Channel Fixed Link, including the part under the United Kingdom's jurisdiction.

Therefore, it is appropriate to include the rail safety and interoperability elements into in an agreement between the French Republic and the United Kingdom, hence the need to empower the French Republic to that effect.

The proposed Decision of the European Parliament and of the Council addressed to the French Republic and empowering it under Article 2(1) and 91 TFEU to negotiate and conclude such an agreement with the United Kingdom therefore represents an adequate instrument.

² 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

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

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

Not applicable.

- **Stakeholder consultations**

No formal consultation was performed. This proposal is based on a request made by the French Republic and the empowerment proposed would be addressed to this Member State only.

- **Impact assessment**

The proposal is based on a request made by the French Republic and the empowerment proposed would be addressed to this Member State only. It also concerns a very specific matter, limited in scope, namely the coherence of safety and interoperability requirements across the entire Channel Fixed Link.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal has no impact on the Union budget.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

empowering the French Republic to negotiate, sign and conclude an international agreement on the safety and interoperability requirements within the Channel Fixed Link

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 2(1) and 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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Treaty between the French Republic and the United Kingdom of Great Britain and Northern Ireland concerning the construction and operation by private concessionaires of a Channel Fixed Link, signed at Canterbury on 12 February 1986 (“the Treaty of Canterbury”) established an Intergovernmental Commission to supervise all matters concerning the construction and operation of the Channel Fixed Link.
- (2) Since the end of the transition period provided for by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community⁵, the infrastructure manager of the Channel Fixed Link and the rail undertakings operating in the Channel Fixed Link are subject to two separate legal frameworks as regards railway safety and interoperability.
- (3) By letter of 16 July 2020, the French Republic requested an empowerment by the Union to negotiate and conclude an international agreement with the United Kingdom on the safety and interoperability requirements within the Channel Fixed Link. In accordance with such request, Decision (EU) 2020/1531 of the European Parliament and of the Council⁶ empowered the French Republic to negotiate an agreement to ensure the unified and dynamic application of Union law, in particular Regulation

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 29, 31.1. 2020, p.7.

⁶ 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.

(EU) 2016/796 of the European Parliament and of the Council⁷ and Directives (EU) 2016/797 and (EU) 2016/798 of the European Parliament and of the Council⁸, over the entire Channel Fixed Link. Also, Decision (EU) 2020/1531 laid down the conditions under which the Intergovernmental Commission could continue fulfilling the role of national safety authority responsible for the part of the Channel Fixed Link under the jurisdiction of the French Republic.

- (4) Because the negotiations under the conditions laid down in that decision have so far not led to an agreement satisfactory for both Parties, by letter of 23 March 2023 the French Republic manifested its intention to negotiate and conclude a different agreement.
- (5) An international agreement with a third country on railway safety and interoperability in cross-border situations is liable to affect an area covered to a large extent by Union law, and in particular by Directives (EU) 2016/798⁹ and (EU) 2016/797 and Regulation (EU) 2016/796 of the European Parliament and the Council. Therefore, any such agreement falls within the Union's exclusive external competence. Member States may negotiate and conclude such agreement 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). Since the agreement concerns areas covered by existing Union law in the area of transport, it is necessary that such empowerment be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU.
- (6) Considering the uniqueness of the Channel Fixed Link as a railway link involving a single, complex engineering structure situated partly in the territory of the French Republic and partly in a third country, it is appropriate to authorise the French Republic to negotiate, sign and conclude an international agreement with the United Kingdom to ensure the application of coherent rules on safety and interoperability in the Channel Fixed Link, as well as to ensure the cooperation between the French national safety authority, namely the Etablissement Public de Sécurité Ferroviaire ('EPSF') and the United Kingdom's national safety authority, namely the Office of Rail and Road ('ORR').
- (7) The part of the Channel Fixed Link under the jurisdiction of the French Republic should remain subject to Union law. The principles of primacy and, where relevant, direct effect of Union law and the respective competences of Union institutions and bodies should be safeguarded.
- (8) Disputes between the French Republic and the United Kingdom concerning the application of the Agreement should not be submitted to the arbitral tribunal set up under Article 19 of the Treaty of Canterbury or to any other means of legally binding dispute settlement.

⁷ Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

⁸ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).
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).

⁹ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast), OJ L 138 26.5.2016, p. 102

- (9) In accordance with Article 3 of the Regulation (EU) 2016/796, the European Union Agency for Railways should continue having the sole responsibility for the functions and powers assigned to it and, in accordance with Article 16 of Directive (EU) 2016/798, the EPSF should continue to be independent in its decision making. Consequently, the role, in respect of the matters addressed in the proposed agreement, of the Intergovernmental Commission and the Safety Authority established under the Treaty of Canterbury should be limited to coordinating the activities of the EPSF and the ORR. The regulatory acts of the Intergovernmental Commission and the Safety Authority or their effects should not affect the decision-making autonomy of the EPSF, in conformity with Union law.
- (10) In order to ensure that Union law is correctly implemented at all times in the part of the Channel Fixed Link under the jurisdiction of the French Republic, and in order to ensure that the Commission can oversee its application under the control of the Court of Justice, including in circumstances of urgency, the French Republic should retain the right to unilaterally suspend or terminate the agreement.
- (11) In order to account for possible future changes of Union law, in particular of Directives (EU) 2016/797 and (EU) 2016/798, the agreement should also provide for rules for its amendment. The Commission should be empowered to authorise the French Republic to amend the agreement in accordance with the amending procedure laid down therein, in order to adapt it to changes in Union law.
- (12) With a view to future possible developments, this empowerment should be without prejudice to the empowerment granted by the Union in Decision (EU) 2020/1531,

HAVE ADOPTED THIS DECISION:

Article 1

The French Republic is empowered to negotiate, sign and conclude an international agreement with the United Kingdom on the safety and interoperability requirements in the Channel Fixed Link, as well as cooperation between the EPSF and the ORR ('the agreement').

The empowerment is subject to the conditions set out in Articles 2 and 3 of this Decision.

Article 2

1. In respect of the part of the Channel Fixed Link under the French Republic jurisdiction, the agreement shall comply with the following conditions:
 - (a) The agreement shall be compatible with Union law in all respects. The principles of primacy and, where applicable, direct effect of Union law shall be ensured.
 - (b) Disputes between the French Republic and the United Kingdom concerning the application of the Agreement shall not be submitted to the arbitral tribunal set up under Article 19 of the Treaty of Canterbury or to any other means of legally binding dispute settlement.
 - (c) The French Republic shall retain the right to unilaterally suspend or denounce the agreement, with a view to ensuring the full, correct and expeditious application of Union law in the part of the Channel Fixed Link under its jurisdiction.

- (d) The agreement shall provide for a mechanism for its amendment, in order to adapt it to changes in Union law.
- (e) The independence and the respective powers granted by Union law to the European Union Agency for Railways and the EPSF, as national safety authority within the meaning of Directive (EU) 2016/798, shall be ensured. In particular,
 - Acts of the ORR shall only be recognised for the purposes of the agreement in matters where an earlier agreement has been concluded under Article 14(5) of Directive 2012/34/EU¹⁰.
 - Equivalence of the acts of the ORR shall only be recognised where this is provided for by the Convention concerning International Carriage by Rail (COTIF).
 - In respect of the matters falling within the scope of the agreement, the tasks and powers of the Intergovernmental Commission and the Safety Authority established by the Treaty of Canterbury shall not affect the decision-making autonomy of the EPSF, in conformity with Union law.

Article 3

The French Republic shall keep the Commission regularly informed of the negotiations with the United Kingdom of the agreement and, where appropriate, invite the Commission to participate as an observer.

Upon completion of the negotiations, the French Republic shall submit the resulting draft agreement to the Commission. The Commission shall inform the Council and the European Parliament thereof.

Within one month from the notification of the draft agreement, the Commission shall adopt a decision as to whether the requirements set out in Article 2 are fulfilled. Where the Commission decides that they are fulfilled, the French Republic may sign and conclude the corresponding agreement.

The French Republic shall provide a copy of the signed agreement to the Commission within one month of its entry into force, or, where the agreement is to be applied provisionally, within one month of the beginning of its provisional application.

Article 4

Throughout the duration of the agreement, the French Republic shall ensure the full, correct and expeditious application of Union law in the part of the Channel Fixed Link under its jurisdiction. The French Republic shall take appropriate measures in that respect including, where necessary, the suspension or the denunciation of the agreement.

Article 5

1. Subject to paragraphs 2 and 3 of this article, the French Republic is empowered to amend the agreement, in accordance with the procedure to be laid down therein, in order to adapt it to future changes in Union law, and in particular to amendments of Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798,

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

provided that amendments of that agreement are necessary to ensure the full, correct and expeditious application of Union law in the part of the Channel Fixed Link under its jurisdiction.

2. The French Republic shall keep the Commission regularly informed of any negotiations with the United Kingdom concerning amendments to the agreement and, where appropriate, invite the Commission to participate as an observer. The French Republic shall submit the envisaged amendments to the Commission together with an explanatory note. The Commission shall inform the Council and the European Parliament thereof. The French Republic shall provide any additional information on the envisaged amendments that is requested by the Commission.
3. Within [three] months from the notification of the envisaged amendment and the accompanying explanatory note, the Commission shall adopt a decision as to whether the requirements set out in paragraph 1 and in Article 2 are fulfilled. Where the Commission decides that they are fulfilled, the French Republic may proceed with the amendment of the agreement. A copy of the amended agreement shall be provided to the Commission within one month of the entry into force of the amendment, or, where the amendment is to be applied provisionally, within one month of the beginning of its provisional application.

Article 6

This Decision is without prejudice to Decision (EU) 2020/1531.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*