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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	ST 10787/21
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 - Mandate for negotiations with the European Parliament

1. On 13 July 2021, the Commission submitted the above proposal. The aim of the proposal is to extend the period of validity of certificates and licences for concerned operations in the Channel Fixed Link until 31 March 2022 by amending Regulation (EU) 2020/2222¹ and thereby to ensure that the operations will not come to a halt on 30 September 2021.
2. The Working Party on the UK on 16 July examined the Commission proposal as set out in document ST 10787/21. Delegations intervening on the subject welcomed the proposal and only made comments of a technical nature. On that basis, the Presidency presented a compromise proposal amending the above-mentioned Commission proposal as set out in document ST 10787/1/21 REV 1.

¹ OJ L 437, 28.12.2020, p. 43.

3. Delegations intervening in the Working Party on the UK on 20 July welcomed the Presidency compromise proposal and highlighted the need for a swift adoption to ensure continuity in the Channel tunnel's rail connection. The Presidency concluded that this compromise proposal should be submitted to Coreper, in order to allow the European Parliament to organise a vote in first reading during its Plenary meeting in September (13-16 September).
4. In view of this, the Permanent Representatives Committee is invited to:
- agree on the mandate for negotiations with the European Parliament based on the Presidency compromise proposal, as set out in the Annex to this note;
 - authorise the Presidency to request to the European Parliament the use of the urgent procedure;
 - confirm that should the European Parliament approve the Presidency compromise proposal without amendments, subject to revision of the text by the legal-linguist experts of both institutions, the Council would approve the European Parliament's position, resulting in the adoption of the Regulation in the form of the Presidency compromise proposal as revised by the lawyer-linguists;
 - authorise the Presidency to inform the European Parliament thereof.
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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)

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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C , , p. .

³ OJ C , , p. .

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 Community⁴, 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 Council⁵ 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 Council⁶ 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 Council⁷ 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.

⁴ 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.

⁵ 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.

⁶ 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*

⁷ 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*

- (2) Decision (EU) 2020/1531 of the European Parliament and of the Council⁸ 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 Concessionnaires 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 ~~is 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, u~~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, **subject to a positive assessment and the decision taken by the Commission pursuant to Article 14(4) and (5) of Directive 2012/34/EC**, 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.

⁸ 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 Concessionnaires of a Channel Fixed Link, OJ L 352, 22.10.2020, p. 4

- (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 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
