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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link – Outcome of the European Parliament's first reading (Brussels, 5 to 8 October 2020)

I. INTRODUCTION

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, after the plenary approved the request of the Committee on Transport and Tourism to proceed according to the Rule 163 (urgent procedure) on 5 October 2020, the EPP submitted one amendment (amendment 3), S&D submitted one amendment (amendment 1) and Renew submitted one amendment (amendment 2) to the abovementioned proposal for a Decision.

II. VOTE

When it voted on 8 October 2020, the plenary adopted all three amendments (amendments 1-3) to the proposal for a Decision. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[1].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position bringing to a close the first reading for both Institutions.

The legislative act would then be adopted in the wording which corresponds to the Parliament's position.

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[1] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

P9_TA(2020)0262

Decision empowering France to conclude an international agreement concerning the Channel tunnel ***I

European Parliament legislative resolution of 8 October 2020 on the proposal for a decision of the European Parliament and of the Council empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link (COM(2020)0622(COR1) – C9-0211/2020 – 2020/0160(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2020)0622(COR1)),

– 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 (C9-0211/2020),

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 16 September 2020[2],

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 9 September 2020 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rules 59, 40 and 163 of its Rules of Procedure,

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.

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2 Not yet published in the Official Journal.

P9_TC1-COD(2020)0160

Position of the European Parliament adopted at first reading on 8 October 2020 with a view to the adoption of Decision (EU) 2020/… of the European Parliament and of the Council 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

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[3],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[4],

[3] Opinion of 16 September 2020 (not yet published in the Official Journal).
[4] Position of the European Parliament of 8 October 2020.

Whereas:

(1) 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, 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 ("the Intergovernmental Commission").

(2) Until the end of the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[5] ("the transition period"), the Intergovernmental Commission is a body entrusted by several Member States with the tasks regarding railway safety in respect of the Channel Fixed Link. In this regard, the Intergovernmental Commission therefore constitutes the national safety authority within the meaning of Directive (EU) 2016/798 of the European Parliament and of the Council[6]. In that capacity, it applies the provisions of Union law relevant to railway safety and, under Directive (EU) 2016/797 of the European Parliament and of the Council[7], railway interoperability.

(3) At the end of the transition period, the Intergovernmental Commission will become a body established through an international agreement between a Member State, namely France, and a third country, namely the United Kindgom of Great Britain and Northern Ireland ('the United Kingdom'). Furthermore, and unless otherwise provided for in an international agreement binding upon the United Kingdom, Union law will no longer be applicable to the part of the Channel Fixed Link under the jurisdiction of the United Kingdom.

(4) An international agreement with a third country regarding the application of railway safety and interoperability rules in cross-border situations is liable to affect an area covered to a large extent by Union law, and in particular by Regulation (EU) 2016/796 of the European

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5 OJ L 29, 31.1.2020, p. 7.

6 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).

7 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).

Parliament and of the Council[8] and Directives (EU) 2016/797 and (EU) 2016/798. Therefore, any such agreement falls within the Union's exclusive external competence. Member States may negotiate, or conclude, such an 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). Because of the interaction with existing Union legislation, it is also necessary for such empowerment to be granted by the Union legislator in accordance with the legislative procedure referred to in Article 91 TFEU.

(5) By letter of 16 July 2020, France requested an empowerment from the Union to negotiate and conclude with the United Kingdom an international agreement supplementing the Treaty of Canterbury.

(6) To ensure the safe and efficient operation of the Channel Fixed Link, it is appropriate to retain the Intergovernmental Commission as the single safety authority responsible for the whole of that infrastructure. Considering the special position of the Channel Fixed Link as a railway link involving a single, complex engineering structure situated partly in the territory of France and partly in the territory of a third country, it is appropriate to empower France to negotiate, sign and conclude an international agreement with the United Kingdom regarding the application of the railway safety rules of the Union to the Channel Fixed Link in order to maintain a unified safety regime, subject to certain conditions.

(7) The Intergovernmental Commission is capable of fulfilling the role of national safety authority responsible for the part of the Channel Fixed Link under France's jurisdiction provided that Directive (EU) 2016/798 is amended and certain conditions are fulfilled.

(8) The Intergovernmental Commission should apply the same rules over the entire Channel Fixed Link. Those rules should be the relevant provisions of Union law, and in particular Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798, as amended or replaced, as well as the acts adopted on the basis of those legal acts.

(9) In accordance with the Treaty of Canterbury, disputes between France and the United Kingdom relating to the interpretation or application of that Treaty are to be settled by an arbitral tribunal. Where such disputes raise questions of interpretation of Union law, in order

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8 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).

to ensure the correct application of Union law, the arbitral tribunal should request the Court of Justice of the European Union ("Court of Justice") to give a preliminary ruling on such questions and should be bound by its ruling.

(10) It is necessary to establish specific rules regarding the implementation of Union law in the part of the Channel Fixed Link under France's jurisdiction, in order to ensure that Union law is correctly implemented at all times and that the Commission can oversee its application under the control of the Court of Justice, including in circumstances of urgency or in the event of failure by the Intergovernmental Commission to comply with a decision of the arbitral tribunal. To that end, France should retain the right to act unilaterally, where necessary, to ensure the full, correct and expeditious application of Union law in the part of the Channel Fixed Link under its jurisdiction.

(11) In order to ensure effective legal protection in the fields covered by Union law, courts or tribunals to which Article 19(1) of the Treaty on European Union (TEU) applies should be exclusively competent for applications brought by concessionnaires and users of the Channel Fixed Link against decisions of the Intergovernmental Commission.

(12) The elements described in Recitals 8 to 11 should be reflected in the international agreements between France and the United Kingdom regarding the Channel Fixed Link. Those international agreements should be compatible with Union law in all respects,

HAVE ADOPTED THIS DECISION:

Article 1

This Decision sets out the conditions pursuant to which France is empowered to negotiate, sign and conclude an international agreement ("the supplementing agreement") with the United Kingdom 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***.***

Such an international ***agreement shall*** enter into force after the end of the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and ***shall*** compl***y*** with the following ***conditions***:

(a) in order to maintain a unified safety regime on the whole Channel Fixed Link, the Intergovernmental Commission shall ensure the application, as regards the Channel Fixed Link, of the provisions of Union law, ***as interpreted by the Court of Justice of the European Union*** ("Court of Justice"), relevant to the tasks of the national safety authority within the meaning of Article 3, point (7), of Directive (EU) 2016/798, and in particular of Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798, as amended or replaced, as well as of acts adopted on the basis of those legal acts;

(b) where a dispute submitted to arbitration in accordance with Article 19 of the Treaty of Canterbury raises a question of interpretation of Union law, the arbitral tribunal shall not have the power to decide on any such question. In such a case, the arbitral tribunal shall request the Court of Justice to give a preliminary ruling on the question. The preliminary ruling of the Court of Justice shall be binding on the arbitral tribunal;

(c) where necessary, in particular in circumstances of urgency or in case of failure by the Intergovernmental Commission to comply with a decision of the arbitral tribunal, France shall retain the right to act unilaterally 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) courts or tribunals to which Article 19(1) TEU applies shall be exclusively competent to decide on remedies sought by concessionnaires and users of the Channel Fixed Link against decisions taken by the Intergovernmental Commission in its capacity as a national safety authority within the meaning of Article 3, point (7), of Directive (EU) 2016/798;

(e) it must be compatible with Union law in all respects.

Article 2

France shall keep the Commission regularly informed of the negotiations with the United Kingdom on the supplementing agreement and, where appropriate, invite the Commission to participate in the negotiations as an observer.

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

Within one month from the receipt of the draft supplementing agreement, the Commission shall take a decision as to whether the conditions set out in Article 1 of this Decision are fulfilled. Where the Commission decides that they are fulfilled, France may sign and conclude the supplementing agreement.

France shall provide the Commission with a copy of the supplementing agreement within one month of its entry into force or, where the supplementing agreement is to be applied provisionally, within one month of the start of its provisional application.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*