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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2016/798, as regards the application of railway safety and interoperability rules within the 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 Regulation.

II. VOTE

When it voted on 8 October 2020, the plenary adopted all three amendments (amendments 1-3) to the proposal for a Regulation. 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.

ANNEX
(8.10.2020)

P9_TA(2020)0261

Application of railway safety and interoperability rules within the Channel tunnel ***I

European Parliament legislative resolution of 8 October 2020 on the proposal for a regulation of the European Parliament and of the Council amending Directive (EU) 2016/798, as regards the application of railway safety and interoperability rules within the Channel Fixed Link (COM(2020)0623 – C9-0212/2020 – 2020/0161(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2020)0623),

– having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0212/2020),

– 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 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.

[2] Not yet published in the Official Journal.

P9_TC1-COD(2020)0161

Position of the European Parliament adopted at first reading on 8 October 2020 with a view to the adoption of Regulation (EU) 2020/… of the European Parliament and of the Council amending Directive (EU) 2016/798, as regards the application of railway safety and interoperability rules 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 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) Directive (EU) 2016/798 of the European Parliament and of the Council[5] requires each Member State to establish a national safety authority to be entrusted with the tasks specified in relation to railway safety. In accordance with that Directive, a national safety authority may be a body established unilaterally by the Member State concerned or, alternatively, a body entrusted by several Member States with those tasks in order to ensure a unified safety regime.

(2) 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, 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").

(3) 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[6] ("the transition period"), the Intergovernmental Commission is the national safety authority within the meaning of Directive (EU) 2016/798 responsible for the Channel Fixed Link.

(4) 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 Kingdom of Great Britain and Northern Ireland ('the United Kingdom'). Unless otherwise provided for in an international agreement binding upon the United Kingdom, it will no longer be a national safety authority under Union law and Union law will no longer be applicable to the part of the Channel Fixed Link under the jurisdiction of the United Kingdom.

(5) 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.

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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).

6 OJ L 29, 31.1.2020, p. 7.

(6) To that end, Decision (EU) 2020/… of the European Parliament and of the Council[7+] empowers France, under certain conditions, to negotiate, sign and conclude an international agreement, supplementing the Treaty of Canterbury, under which the Intergovernmental Commission is retained as the single safety authority competent for the application of Union law within the Channel Fixed Link.

(7) To this effect, specific rules should be established regarding specific safety authorities, as well as regarding the duties of the Member State concerned to take all the necessary measures to ensure that Union law is applied at all times by the specifc safety authority or, failing that, by its national safety authority.

(8) Dispute settlement between the Member State concerned and the third country in the area of railway safety may raise questions of interpretation of Union law. Consequently, the Court of Justice of the European Union should be made competent to give preliminary rulings on such questions.

(9) Directive (EU) 2016/798 should therefore be amended accordingly.

(10) Since the objective of this Regulation, namely to ensure the safe and efficient operation of the Channel Fixed Link after the end of the transition period, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, 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 to achieve that objective.

(11) This Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

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7 Decision (EU) 2020/… of the European Parliament and of the Council … .

\+ OJ: Please insert in the text the number of the Decision contained in document PE-CONS 31/20 (2020/0160(COD)) and insert the number, date, title and OJ reference of that Decision in the footnote.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Directive (EU) 2016/798

Directive (EU) 2016/798 is amended as follows:

(1) in Article 3, point (7) is replaced by the following:

"7. 'national safety authority' means:

(a) the national body entrusted with the tasks regarding railway safety in accordance with this Directive;

(b) any body entrusted by several Member States with the tasks referred to in point (a) in order to ensure a unified safety regime;

(c) any body entrusted by a Member State and a third country with the tasks referred to in point (a) in order to ensure a unified safety regime, provided that the Union has concluded an agreement to this effect with the third country concerned or that that Member State has concluded such agreement in accordance with an empowerment granted by the Union to that effect.";

(2) in Article 16, the following paragraphs are added:

'4. Where a single piece of engineering structure is situated partly in a third country and partly in a Member State, that Member State may designate, in addition to the national safety authority otherwise competent for its territory, and in accordance with the Article 3, point (7), point (c), and with an international agreement concluded by the Union or whose conclusion is authorised by the Union, a safety authority competent specifically for that engineering structure and all other elements of the rail infrastructure linked to it ('the specific safety authority'). In accordance with that international agreement, the national safety authority may temporarily assume competence for the part of the engineering structure situated in that Member State.

In the context of any international agreement referred to in the first subparagraph, the Member State concerned shall take all measures at its disposal under that international agreement to ensure that the specific safety authority complies with the Union law. To this effect, and where necessary for

reasons of railway safety, the Member State concerned shall without delay make use of the right granted by that international agreement, whereby the national safety authority is entitled to assume sole competence for the part of the engineering structure situated in that Member State.

5. Where a dispute submitted to arbitration in accordance with an international agreement raises a question of interpretation of Union law, the Court of Justice of the European Union ('Court of Justice') shall have jurisdiction to give a preliminary ruling on the question at the request of the arbitral tribunal set up to settle disputes under that international agreement.

The provisions of Union law governing proceedings before the Court of Justice in accordance with Article 267 of the Treaty on the Functioning of the European Union shall apply *mutatis mutandis* to requests for a preliminary ruling of the Court of Justice made pursuant to the first subparagraph of this paragraph.

▌

Where the ***arbitral tribunal*** fails to comply with any ruling of the Court of Justice delivered in accordance with the first subparagraph, the Member State concerned shall without delay make use of the right granted by the international agreement, whereby the national safety authority is entitled to assume sole competence for the part of the engineering structure situated in that Member State.'.

Article 2

Entry into force

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	*For the Council*
The President	*The President*