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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 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 - Outcome of the European Parliament's first reading (Brussels, 14-18 December 2020)

I. INTRODUCTION

On 2 December 2020, the Permanent Representatives Committee confirmed that should the European Parliament approve the abovementioned Commission's proposal without amendments, the Council would approve the European Parliament's position.

After the plenary approved the request of the Committee on Transport and Tourism to proceed according to the Rule 163 (urgent procedure) on 14 December 2020, the Committee on Transport and Tourism presented a report aiming at taking over the Commission proposal.

II. VOTE

The Parliament adopted its first-reading position on 17 December 2020 by taking over the Commission proposal. This position is contained in its legislative resolution.

The Council should therefore be in a position to approve the European Parliament's position as set out in the Annex hereto, thus bringing to a close the first reading for both Institutions.

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

P9_TA(2020)0381

Certain aspects of railway safety and connectivity with regard to the Channel Tunnel ***I

European Parliament legislative resolution of 17 December 2020 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2020)0782 – C9-0379/2020 – 2020/0347(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2020)0782),

– having regard to Article 294(2) and Article 91(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0379/2020),

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

– after consulting the European Economic and Social Committee,

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 2 December 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.

P9_TC1-COD(2020)0347

Position of the European Parliament adopted at first reading on 17 December 2020 with a view to the adoption of Regulation (EU) 2020/… of the European Parliament and of the Council 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

(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,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[1],

[1] Position of the European Parliament of 17 December 2020.

Whereas:

(1) The Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community[2] (the "Withdrawal Agreement") was concluded by the Union by Council Decision (EU) 2020/135[3] and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of the Withdrawal Agreement (the "transition period"), ends on 31 December 2020.

(2) 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") established an Intergovernmental Commission to supervise all matters concerning the construction and operation of the Channel Fixed Link.

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2 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).

3 Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of 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 (OJ L 29, 31.1.2020, p. 1).

(3) Until the end of the transition period, the Intergovernmental Commission constitutes the national safety authority within the meaning of Directive (EU) 2016/798 of the European Parliament and of the Council[4]. In that capacity, it applies in the entirety of the Channel Fixed Link the provisions of Union law relevant to railway safety and, under Directive (EU) 2016/797[5] of the European Parliament and of the Council, railway interoperability.

(4) After the end of the transition period, unless otherwise provided, Union law will no longer be applicable to the part of the Channel Fixed Link under the jurisdiction of the United Kingdom and, as regards the part of the Channel Fixed Link under the jurisdiction of France, the Intergovernmental Commission will no longer be a national safety authority under Union law. The safety authorisation for the Channel Fixed Link infrastructure manager and safety certificates for railway undertakings operating through the Channel Fixed Link issued by the Intergovernmental Commission pursuant to Article 11 and Article 10 respectively of Directive 2004/49/EC of the European Parliament and of the Council[6] will cease to be valid from 1 January 2021.

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4 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).

5 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).

6 Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railway 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).

(5) By Decision (EU) 2020/1531 of the European Parliament and of the Council[7], France was empowered to negotiate, sign and conclude an international agreement with the United Kingdom regarding the application of the railway safety and interoperability rules of the Union to the Channel Fixed Link in order to maintain a unified safety regime. Regulation (EU) 2020/1530 of the European Parliament and of the Council[8] amended Directive (EU) 2016/798 as regards, inter alia, the rules pertaining to national safety authorities.

(6) On the basis of Regulation (EU) 2020/1530, and subject to an agreement envisaged by Decision (EU) 2020/1531 and concluded under certain conditions set out in that Decision, the Intergovernmental Commission was to remain the single safety authority for the entirety of the Channel Fixed Link while constituting, as regards the part of the Channel Fixed Link under the jurisdiction of France, the national safety authority within the meaning of point (7) of Article 3, of Directive (EU) 2016/798.It is, however, unlikely that the agreement envisaged by Decision (EU) 2020/1531 will have entered into force by the end of the transition period.

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7 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).

8 Regulation (EU) 2020/1530 of the European Parliament and of the Council of 21 October 2020 amending Directive (EU) 2016/798, as regards the application of railway safety and interoperability rules within the Channel Fixed Link (OJ L 352, 22.10.2020, p. 1).

(7) Without such an agreement, as from 1 January 2021, the Intergovernmental Commission will no longer qualify as a national safety authority within the meaning of point (7) of Article 3, of Directive (EU) 2016/798, as regards the part of the Channel Fixed Link under the jurisdiction of France. Safety authorisations and safety certificates issued by the Intergovernmental Commission will cease to be valid. The French national safety authority will become the competent national safety authority for the section of the Channel Fixed Link under the jurisdiction of France.

(8) In light of the economic importance to the Union of the Channel Fixed Link, it is essential that the Channel Fixed Link continues to operate after 1 January 2021. To that end, the safety authorisation for the Channel Fixed Link infrastructure manager issued by the Intergovernmental Commission should remain valid for a maximum period of two months from the date of application of this Regulation, which is enough time to enable the French national safety authority to issue its own safety authorisation.

(9) The licences issued under Chapter III of Directive 2012/34/EU of the European Parliament and of the Council[9] to railway undertakings established in the United Kingdom will no longer be valid after the end of the transition period. On 10 November 2020, pursuant to Article 14(3) of Directive 2012/34/EU, France notified the Commission of its intention to enter into negotiations on a cross-border agreement with the United Kingdom. The objective of such an agreement would be to allow rail undertakings established and licenced 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.

(10) In order to ensure the connectivity between the Union and the United Kingdom, it is essential that the rail undertakings established and licenced in the United Kingdom continue to operate. To that end, the period of validity of their licences issued by the United Kingdom under Directive 2012/34/EU and of their safety certificates issued by the Intergovernmental Commission should be extended for a period of nine months from the date of application of this Regulation, which is enough time to enable the Member State concerned to take the necessary steps to ensure connectivity in accordance with Directives 2012/34/EU and (EU) 2016/798 and on the basis of the agreement envisaged by Decision (EU) 2020/1531.

[9] 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) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the withdrawal of the benefit conferred on holders of the authorisations, certificates and licences, where compliance with the Union requirements is not ensured. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10]. The examination procedure should be used for the adoption of those measures, given their potential impact on railway safety. The Commission should adopt immediately applicable implementing acts where, in duly justified cases, imperative grounds of urgency so require.

(12) In view of the urgency entailed by the end of the transition period, 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.

[10] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(13) Since the objective of this Regulation, namely 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.

(14) This Regulation should enter into force as a matter of urgency and should apply from the day following that of the end of the transition period,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down specific provisions, in view of the ending of the transition period referred to in Article 126 of the Withdrawal Agreement, for certain safety authorisations and safety certificates issued under Directive 2004/49/EC and certain licences of railway undertakings issued under Directive 2012/34/EU, referred to in paragraph 2.

2. This Regulation shall apply to the following authorisations, certificates and licences, which are valid on 31 December 2020:

   (a) safety authorisations issued under Article 11 of Directive 2004/49/EC to infrastructure managers for the management and operation of cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link;

   (b) safety certificates issued under Article 10 of Directive 2004/49/EC to railway undertakings established in the United Kingdom and using the cross-border infrastructure linking the Union and the United Kingdom through 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 Fixed Link.

Article 2

Definitions

For the purposes of this Regulation, relevant definitions in Directives 2012/34/EU and (EU) 2016/798 and the delegated and implementing acts adopted under those Directives and under Directive 2004/49/EC shall apply.

Article 3

Validity of safety authorisations, safety certificates and licences

1. The safety authorisations referred to in point (a) of Article 1(2) shall remain valid for two months from the date of application of this Regulation.

2. The safety certificates referred to in point (b) of Article 1(2) shall remain valid for nine months from the date of application of this Regulation. They shall be valid only for the purpose of reaching the border crossing station and terminal of Calais-Fréthun from the United Kingdom or departing from that station and terminal to the United Kingdom.

3. Licences referred to in point (c) of Article 1(2) shall remain valid for nine months from the date of application of this Regulation. By way of derogation from Article 23(1) of Directive 2012/34/EU, those licences shall be valid only on the territory situated between the border-crossing station and terminal of Calais-Fréthun and the United Kingdom.

Article 4

Rules and obligations regarding safety authorisations, safety certificates and licenses

1. Safety authorisations, safety certificates and licences governed by Article 3 of this Regulation are subject to the rules applicable to them in accordance with Directives 2012/34/EU and (EU) 2016/798, and in accordance with the implementing and delegated acts adopted under those Directives.

2. The holders of safety authorisations, safety certificates and licences referred to in Article 1(2), and, as appropriate, the authority issuing them, when different from the national safety authority in whose territory the infrastructure is situated in the Union and under whose competence the border-crossing station and terminal of Calais-Fréthun falls, shall cooperate with that national safety authority and deliver to it all relevant information and documents.

3. Where information or documents have not been delivered within the time limits set in requests made by the national safety authority referred to in paragraph 2 of this Article, the Commission may, upon notification by the national safety authority, adopt implementing acts to withdraw the benefit conferred on the holder pursuant to Article 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7(2).

4. Holders of safety authorisations, safety certificates and licences referred to in Article 1(2) of this Regulation shall inform without delay the Commission and the European Union Agency for Railways of any actions by other competent safety authorities, which may conflict with their obligations under this Regulation, Directive 2012/34/EU or Directive (EU) 2016/798.

5. Before withdrawing the benefits conferred pursuant to Article 3, the Commission shall in due time inform the national safety authority referred to in paragraph 2 of this Article, the authority having issued the safety authorisations, safety certificates and licences referred to in Article 1(2), and the holders of such authorisations, certificates and licences of its intention to proceed to such withdrawal, and shall provide them with the opportunity to make their views known.

6. As regards the licences referred to in point (c) of Article 1(2) of this Regulation, for the purposes of paragraphs (1) to (5) of this Article, references to a national safety authority shall be understood as references to a licencing authority defined in point (15) of Article 3 of Directive 2012/34/EU.

Article 5

Monitoring compliance with Union law

1. The national safety authority referred to in Article 4(2) shall monitor the railway safety standards applied to railway undertakings established in the United Kingdom using the cross-border infrastructure referred to in point (a) of Article 1(2), and applied to that cross-border infrastructure. In addition, the national safety authority shall check that infrastructure managers and railway undertakings comply with the safety requirements set out in Union law. Where appropriate, the national safety authority shall provide the Commission and the European Union Agency for Railways with a recommendation for the Commission to act in accordance with paragraph 2 of this Article.

   The licencing authority referred to in Article 4(2), in conjunction with Article 4(6), of this Regulation shall monitor whether the requirements of Articles 19 to 22 of Directive 2012/34/EU continue to be met in relation to railway undertakings licenced by the United Kingdom referred to in point (c) of Article 1(2) of this Regulation.

2. Where the Commission has justified doubts that the safety standards applied to the operation of cross-border railway services or infrastructure falling within the scope of this Regulation or the part of the same infrastructure that is situated in the United Kingdom are in line with the relevant provisions of Union law, it shall without undue delay adopt implementing acts to withdraw the benefit conferred on the holder pursuant to Article 3. The power to adopt implementing acts shall apply *mutatis mutandis* where the Commission has justified doubts in respect of the fulfilment of the requirements referred to in the second subparagraph of paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7(2).

3. For the purposes of paragraph 1 of this Article, the national safety authority or the licensing authority referred to in Article 4(2), in conjunction with Article 4(6), may request information from the relevant competent authorities, setting a reasonable time limit. Where those relevant competent authorities do not provide the information requested within the established time limit, or provide incomplete information, the Commission may, upon notification by the national safety authority or licencing authority referred to in Article 4(2), in conjunction with Article 4(6), as appropriate, adopt implementing acts to withdraw the benefit conferred on the holder pursuant to Article 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7(2).

4. Before withdrawing the benefits conferred pursuant to Article 3, the Commission shall in due time inform the national safety authority referred to in Article 4(2), the authority having issued the safety authorisations, safety certificates and licences referred to in Article 1(2) and the holders of such authorisations, certificates and licences, as well as the national safety authority and the licensing authority of the United Kingdom, of its intention to proceed to such withdrawal, and shall provide them with the opportunity to make their views known.

Article 6

Consultation and cooperation

1. The competent authorities of the Member State concerned shall consult and cooperate with the competent authorities of the United Kingdom as necessary in order to ensure the implementation of this Regulation.

2. The Member State concerned shall, upon request, provide the Commission without undue delay with any information obtained pursuant to paragraph 1 or any other information relevant for the implementation of this Regulation.

Article 7

Committee

1. The Commission shall be assisted by the committee referred to in Article 51 of Directive (EU) 2016/797 of the Parliament and the Council and by the committee referred to in Article 62 of Directive 2012/34/EU. Those committees shall be committees within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 8

Entry into force and application

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

2. It shall apply from 1 January 2021.

3. This Regulation shall cease to apply on 30 September 2021.

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*