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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 the French Republic to negotiate, sign and conclude an international agreement on the safety and interoperability requirements within the Channel Fixed Link - Outcome of the European Parliament's first reading (Strasbourg, 5 to 8 February 2024)

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, on behalf of the Committee on Transport and Tourism (TRAN), the rapporteur Petar VITANOV (S&D, BG) presented a compromise amendment (amendments number 1 to 15) to the abovementioned proposal for a Decision, for which he had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 7 February 2024, the plenary adopted this compromise amendment (amendments number 1 to 15) to the abovementioned 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.

The 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
(7.2.2024)

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

European Parliament legislative resolution of 7 February 2024 on the 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 (COM(2023)0328 – C9-0205/2023 – 2023/0192(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2023)0328),

– 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 (C9-0205/2023),

– 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 20 September 2019[1],

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 20 December 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

[1] OJ C, C/2023/879, 8.12.2023, ELI: http://data.europa.eu/eli/C/2023/879/oj.

– having regard to Rules 52, 59 and 40 of its Rules of Procedure,

– having regard to the report of the Committee on Transport and Tourism (A9-0018/2024),

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(2023)0192

Position of the European Parliament adopted at first reading on 7 February 2024 with a view to the adoption of Decision (EU) 2024/… 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 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] OJ C, C/2023/879, 8.12.2023, ELI: http://data.europa.eu/eli/C/2023/879/oj.

[4] Position of the European Parliament of 7 February 2024.

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 ('the Intergovernmental Commission').

(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 Community[5], the infrastructure manager of the Channel Fixed Link and the rail undertakings operating in the Channel Fixed Link have been subject to two separate legal frameworks as regards railway safety and interoperability.

[5] OJ L 29, 31.1. 2020, p. 7.

(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 that request, Decision (EU) 2020/1531 of the European Parliament and of the Council[6] empowered the French Republic to negotiate an agreement to ensure the unified and dynamic application of Union law, in particular Regulation (EU) 2016/796 of the European Parliament and of the Council[7] and Directives (EU) 2016/797[8] and (EU) 2016/798[9] of the European Parliament and of the Council, 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) ***It has become clear from*** the negotiations ***between the French Republic and the United Kingdom that an agreement*** under the conditions laid down in that decision ***will*** not ***lead*** to an agreement that is satisfactory for both Parties***. Hence***, by letter of 23 March 2023, the French Republic manifested its intention to negotiate and conclude a different agreement. ***An alternative empowerment is therefore being proposed.***

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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).

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).

9 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) 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 Regulation (EU) 2016/796 and Directives (EU) 2016/798 and (EU) 2016/797 . 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). Since such an agreement concerns areas covered by existing Union law in the area of transport, 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.

(6) 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 the French Republic and partly in a third country, it is appropriate to ***empower the French Republic*** to negotiate, sign and conclude an international agreement with the United Kingdom ***regarding*** the application of coherent rules on safety and interoperability in the Channel Fixed Link ("the Agreement"), 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 the primacy and, where applicable, 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.

(9) In accordance with Article 3 of the Regulation (EU) 2016/796, the European Union Agency for Railways should continue to have 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, in respect of the matters addressed in the Agreement, the role 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 ***Regulation (EU) 2016/796 and*** 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 in that Agreement, ***provided that such amendments are limited*** to ***adaptations*** to ***reflect*** changes in Union law.

(12) ***In the interests of the Union, the French Republic should also be empowered to negotiate further amendments to the agreement concluded on the basis of the empowerment in this decision, reflecting the conditions laid down in Decision (EU) 2020/1531. The*** empowerment granted by the Union in Decision (EU) 2020/1531, ***should therefore remain valid insofar as the agreement concluded on the basis of this empowerment could be amended to reflect the conditions laid down in that decision,***

HAVE ADOPTED THIS DECISION:

Article 1

This Decision hereby sets out the conditions pursuant to which the French Republic is empowered to negotiate, sign,conclude ***and in future amend*** an international agreement with the United Kingdom on the safety and interoperability requirements in the Channel Fixed Link, as well as cooperation between the Etablissement Public de Sécurité Ferroviaire (EPSF) and the Office of Rail and Road (ORR) ('the agreement').

The agreement shall comply with the conditions set out in Articles 2 and 3 of this Decision.

Article 2

In respect of the part of the Channel Fixed Link under the jurisdiction of the French Republic, the agreement shall comply with the following conditions:

(a) The agreement shall be compatible with Union law in all respects. Compliance with the principles of the 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 terminate 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, and 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/EU[10],
- 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),and
- 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.

[10] 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).

Article 3

The French Republic shall keep the Commission regularly informed of the negotiations with the United Kingdom on 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 ***immediately*** inform the European Parliament and the Council of that resulting draft agreement.

Within one month from the submission of the draft agreement to the Commission, the Commission shall adopt a decision as to whether the conditions set out in Article 2 are fulfilled. The Commission ***shall inform the European Parliament and the Council of the adoption of such decision***. Where the Commission decides that those conditions 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. ***The*** French Republic is empowered to ***negotiate amendments to*** the agreement, in accordance with the procedure ***set out in paragraphs 3 and 4 of this Article, provided that such amendments are required*** to adapt the agreement 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, and provided ***also*** that such amendments 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 is also empowered to negotiate further amendments to the agreement, in accordance with the procedure set out in paragraphs 3 and 4 of this Article, to ensure that the agreement complies with the conditions laid down in Article 1 of Decision (EU) 2020/1531.***

3. 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 ***immediately*** inform the European Parliament and the Council thereof. The French Republic shall provide any additional information on the envisaged amendments as requested by the Commission.

4. Within three months from the submission of the envisaged amendment and the accompanying explanatory note to the Commission, the Commission shall adopt a decision as to whether the conditions set out in paragraph 1 of this Article and in Article 2 are fulfilled. Where the Commission decides that those conditions are fulfilled, ***the Commission shall inform the European Parliament and the Council of the adoption of such a decision, and*** 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

Decision (EU) 2020/1531 ***remains applicable to the extent referred to in Article 5(2)***.

Article 7

This Decision is addressed to the French Republic.

Done at...,

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