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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 withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union - Outcome of the European Parliament's first reading, (Strasbourg, 11 to 14 March 2019)

I. INTRODUCTION

After the plenary approved the request of the Committee on Transport and Tourism to proceed according to the Rule 154 (urgent procedure) on 12 March 2019, the Committee subsequently submitted one amendment to the proposal for a Regulation (amendment 1). In addition, more than 38 MEPs submitted one amendment (amendment 2).

II. VOTE

When it voted on 13 March 2019, the plenary adopted the corresponding part 1 of the amendment 1 and the amendment 2.

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].

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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
13.3.2019

Certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom from the Union ***I

European Parliament legislative resolution of 13 March 2019 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 withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (COM(2019)0088 – C8-0046/2019 – 2019/0040(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2019)0088),

– 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 (C8-0046/2019),

– 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 Regions,

– having regard to Rules 59 and 154 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.

P8_TC1-COD(2019)0040

Position of the European Parliament adopted at first reading on 13 March 2019 with a view to the adoption of Regulation (EU) 2019/… of the European Parliament and of the Council on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom ▌ from the Union

(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 Regions,

Acting in accordance with the ordinary legislative procedure[2],

Whereas:

[2] Position of the European Parliament of 13 March 2019.

(1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, ***namely*** from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) In the area of rail transport, the impact of the withdrawal of the United Kingdom from the Union on certificates and authorisations can be remedied by the operators concerned, through various measures. ***Those measures include*** operators establishing themselves in ***one of the remaining*** Member States and obtaining appropriate licences and certificates there.

(3) Specific agreements, as provided for in Article 14 of Directive 2012/34/EU of the European Parliament and of the Council[3], would be necessary to address issues directly concerning cross border rail services and infrastructure, thereby ensuring continuity of such services and minimising disruption. In accordance with that Directive, such agreements would also ensure reciprocal treatment for Union undertakings and undertakings established in the United Kingdom using cross border infrastructure.

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3 Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway (OJ L 343, 14.12.2012, p. 32).

(4) ***The conclusion of such agreements between the Member States concerned and the United Kingdom is only possible after the United Kingdom becomes a third country. In particular, the*** application of ▌ Union safety rules to the Channel tunnel is currently conferred upon ***an Intergovernmental Commission***, set up under the Treaty of Canterbury ***signed on 12 February 1986, which in the safety field benefits from the advice of the Channel Tunnel Safety Authority***. The system established by ***that*** Treaty would have to be adapted taking into account the status of the United Kingdom as ***a*** third country. ***In particular, the responsibility for the part of the Channel tunnel on the French territory should be under the sole control of a competent authority as defined in Article 3(7) of Directive (EU) 2016/798 of the European Parliament and of the Council*** [4]***, in order to ensure that Union law is applied as such to that part of the tunnel. That competent authority could however, with a view to discharging its tasks in the best possible way and having regard to the common features of the tunnel on either side of the border and in order to facilitate consistency of decisions, take account of the opinions of a binational body established under an agreement between the two countries, such as the Channel Tunnel Safety Authority established by the Treaty of Canterbury, which advises the Intergovernmental Commission, or develop other means to cooperate with the authorities responsible for the part of the tunnel on UK territory.***

(5) The measures in this Regulation are conditional on safety standards and procedures**,** ***requirements for access to operating as a railway undertaking, and requirements for driving a train, which are*** identical to Union requirements being applied to the infrastructure which is used for the purposes of ensuring cross-border rail connectivity with the United Kingdom ***as well as to undertakings operating and drivers driving trains on that infrastructure.***

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4 Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast) (OJ L 138 26.5.2016, p. 102).

(6) In order to allow ▌ parties ***concerned*** to enter into the necessary agreements and to take any other measures required to avoid disruptions, taking into account the status of the United Kingdom as a third country, it is necessary to extend the validity of certain ***certificates,*** authorisations ***and licences***.

(7) The duration of such extension of the validity of ***certificates,*** authorisations ***and licences*** should be limited in time to what is strictly necessary in order to enable the Members States concerned to take those necessary steps, in accordance with the ▌ provisions ***set out in Directive 2004/49/EC of the European Parliament and of the Council[5], Directive 2007/59/EC of the European Parliament and of the Council[6] and Directive 2012/34/EU.***

(8) To avoid major disruption of the cross- border rail services with the United Kingdom, it ***is*** also essential that the rail operators and the national authorities take the required measures speedily to ensure that ▌ certificates***,*** authorisations and ***licences falling under this Regulation are issued in good time before this Regulation ceases to apply, and that other certificates, autorisations and licences*** required to operate on Union territory are issued before the ***date of the United Kingdom's withdrawal***.

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5 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.

6 ***Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51).***

(9) 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 ***certificates,*** authorisations ***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[7]. 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.***

(10) ***In view of the*** urgency entailed by the ***withdrawal*** of the United Kingdom ▌ from the Union, ***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 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 ▌ .

[7] 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).

(***11)*** ***Since the objective of this Regulation, namely to lay down provisional measures on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom from the Union, in the event of the absence of a withdrawal agreement, 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.***

(12) The provisions of this Regulation should enter into force as a matter of urgency and ***should*** apply ▌ from the day following that on which the Treaties cease to apply to ▌ the United Kingdom unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down specific provisions, in view of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') from the European Union, for certain safety ***certificates and*** safety authorisations issued under Directive 2004/49/EC**, c*****ertain licences of train drivers issued under Directive 2007/59/EC and certain licences of railways undertakings issued under Directive 2012/34/EU.***

2. This Regulation shall apply to the ***following certificates, authorisations and licences which are valid on the day preceding the date of application of this Regulation:***

(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 ▌;

(b) safety certificates issued under Article 10 of Directive 2004/49/EC to railway undertakings established in the United Kingdom;

(c) licences issued under Chapter III of Directive 2012/34/EU to railway undertakings established in the United Kingdom;

(d) licences of train drivers issued under the procedure referred to in Article 14 of Directive 2007/59/EC.

Article 2

Definitions

For the purposes of this Regulation, the relevant definitions ***in*** Directives 2004/49/EC**,** ***2007/59/EC and 2012/34/EU and in*** the implementing acts adopted ***under those Directives*** shall apply. ***For the purposes of this Regulation, the*** relevant definitions ***in*** Directive (EU) 2016/798 and in any delegated and implementing acts adopted ***under that Directive*** shall apply from the date ***on which*** that Directive becomes applicable to the authorisations ***and certificates*** referred to in ***points (a) and (b) of*** Article 1(2).

Article 3

Validity of safety authorisations, safety certificates, operating licences and train drivers licences

1. The ***safety*** authorisations referred to in ***point (a) of*** Article 1(2**)** ***and 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. ***Safety certificates referred to in point (b) of Article 1(2) shall be valid only for the purpose of reaching the border crossing stations and terminals referred to in the Annex to this Regulation from the United Kingdom or departing from those stations and terminals to the United Kingdom.***

2. The 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 derogation from Article 23(1) of Directive 2012/34/EU, those licences shall be valid only on the territory situated between the border-crossing stations and terminals referred to in the Annex to this Regulation and the United Kingdom.

3. The licences referred to in point (d) of Article 1(2) shall remain valid for nine months from the date of application of this Regulation for train drivers while operating on the territory situated between the border-crossing stations and terminals referred to in the Annex to this Regulation and the United Kingdom.

Article 4

Rules and obligations regarding safety certificates, safety authorisations and licences

1. ***Safety certificates, safety authorisations and licences*** governed by ***Article 3*** of this Regulation are subject to the rules applicable to them in accordance with Directive 2004/49/EC, Directive (EU) 2016/798 from the date it becomes applicable to ***those*** authorisations**,** ***Directive 2012/34/EU and Directive 2007/59/EC,*** and ***in accordance with*** the implementing and delegated acts adopted ***under those*** Directives.

2. The holders of ***safety certificates, safety*** authorisations ***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 ***respectively under whose competence the border-crossing stations and terminals listed in the Annex 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 implementig acts shall be adopted in accordance with examination procedure referred to in Article 7(2).***

4. Holders of ***safety certificates, safety*** authorisations ***and licences*** referred to in ***points (a), (b) and (d) of*** 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 2004/49/EC, ***Directive 2007/59/EC or*** Directive (EU) 2016/798.

Holders of licences referred to in point (c) of Article 1(2) shall inform without delay the Commission of any actions by other competent authorities which may conflict with their obligations under this Regulation or under Directive 2012/34/EU.

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 certificates, safety*** authorisations ***and licences*** referred to in Article 1(2), ***and*** the holders of such ***certificates*****,** authorisations ***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), 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 comply with the safety requirements set out in Union law and that the train drivers operating on the territory under its jurisdiction fulfil the requirements set out in the relevant provisions of Union law.*** The National Safety Authority shall provide the Commission and the European Union Agency for Railways with ▌ reports on this matter, ***which shall be*** accompanied, where appropriate, 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) and (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. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 7(2). This shall apply mutatis mutandis where the Commission has justified doubts in respect of the application of requirements for obtaining a licence as a railway undertaking or for driving a train.***

3. For the purposes of paragraph 1, the National Safety Authority ***or the licensing auhority referred to in Article 4(2) and (6), respectively,*** 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 of the National Safety Authority ***or licensing auhority referred to in Article 4(2) and (6) as appropriate, adopt*** implementing acts adopted ***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 certificates, safety*** authorisations ***and licences*** referred to in Article 1(2), the holders of such ***certificates,*** authorisations ***and licences*** as well as the National Safety Authority ***and the licensing auhority*** of the United Kingdom of its intention to proceed to such withdrawal and provide them ***with*** the opportunity to make their views known.

Article 6

Consultation and cooperation

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

2. Member States shall, upon request, provide the Commission without undue delay 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[8] ***and by the committee referred to in Article 62 of Directive 2012/34/EU. Those*** committee**s** 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.

[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).

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 the day following that on which the Treaties cease to apply to ▌ the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

3. This Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by the date referred to in paragraph 2.

4. This Regulation shall cease to apply ***nine*** months ***from the day on which it*** has become applicable in accordance with paragraph 2.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

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

ANNEX

The border-crossing stations and terminals referred to in Articles 3 and 4 are the following:

1. IRELAND

Dún Dealgan/ Dundalk

2. FRANCE

Calais-Fréthun