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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2019) 88 final.

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Strasbourg, 12.2.2019
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2019/0040 (COD)

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**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, if the Withdrawal Agreement¹ is not ratified, the Union's primary and secondary law will cease to apply to the United Kingdom from 30 March 2019 ('the withdrawal date'). The United Kingdom will then become a third country.

The withdrawal of the United Kingdom from the Union without an agreement affects the validity of 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..

In the Commission Communication on 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'² the Commission set the principles underlying the contingency measures including that they shall not remedy the lack of preparedness measures by stakeholders, or delays in their implementation. In that Communication, the Commission listed the actions it considered necessary while recalling that additional actions may be necessary at a later stage.

The European Council (Article 50) reiterated its call, on 13 December 2018, for work on preparedness at all levels for the consequences of the United Kingdom's withdrawal to be intensified, taking into account all possible outcomes.

The Commission discussed with the Member States the possible consequences of the withdrawal in the context of seminars organised by the Council of the European Union in 2018. Moreover, the impacts of the withdrawal as well as preparedness measures were extensively discussed during a series of visits to all Member States.

In the area of rail transport, in most cases the effect of the withdrawal of the United Kingdom from the European Union on certificates, authorisations and licences can be remedied by stakeholders through various measures, in particular by their establishment in a Member State and through obtaining the appropriate authorisations, certificates and licences there.

However, the negotiation and signature of agreements between the EU Member States concerned and the UK would be necessary to address issues relating directly to rail cross-border operations, ensure their continuity after the withdrawal date, and thereby mitigate disruptions in the Union. The conclusion of such bilateral agreements would only be possible after the UK becomes a third country.

In particular the situation regarding the binational safety authority, set up under the Treaty of Canterbury relating to the Channel Tunnel would have to be adapted taking into account the new status of the United Kingdom as third country.

¹ https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf.

² COM(2018)880 final, 13.11.2018.

Therefore it is appropriate that the Commission proposes measures ensuring continued validity of authorisations for certain parts of the rail infrastructure in line with the relevant EU law.

Such extended validity should be limited in time to what is strictly necessary in order to give the United Kingdom and the Members States concerned the time necessary for concluding the necessary agreements.

This concerns only the 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.

The provisions proposed are intended to ensure the continuity limited to cross-border operations and services in compliance with applicable Union legal requirements. An interruption in these activities would cause significant social and economic problems. In ensuring organisations' compliance with EU law, the proposal will also ensure the protection of consumers and citizens.

The measures in this proposal are conditional on safety standards identical with the EU requirements being applied to the infrastructure on the UK territory, which are used for the purposes of ensuring cross-border rail connectivity.

Major disruption can however only be avoided if the rail operators and the national authorities take all required measures speedily to ensure that market access licences, train drivers licences, as well as all other certificates and authorisations required to operate on Union territory are issued in good time before 30 March 2019.

- **Consistency with existing policy provisions in the policy area**

This proposal is intended as a *lex specialis* that would address some of the consequences ensuing from the fact that the Directive 2004/49/EC will no longer apply to the United Kingdom. The proposed terms are strictly limited to what is necessary in this respect, so as to avoid disruptions of cross-border operations. They are also intended to apply only for a limited period of time. The general provisions of those acts will otherwise continue to apply. This proposal is thus fully consistent with the existing legislation.

- **Consistency with other Union policies**

The proposal concerns railway safety and connectivity, complementing Directive 2004/49/EC to deal specifically with the situation of the United Kingdom withdrawing from the Union without a withdrawal agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

As the proposal complements existing Union law, with provisions facilitating their orderly application following the withdrawal of the United Kingdom from the Union, its objective can only be achieved through an act at the level of the Union.

- **Proportionality**

The proposed Regulation is considered proportionate as it is capable of avoiding disruptions through providing for a limited and necessary legal change, which covers the need to ensure continuity of the cross-border rail services with the United Kingdom. It does not go beyond what is necessary to achieve this objective and it refrains from any broader changes or any permanent measures.

- **Choice of the instrument**

This proposal contains a limited set of provisions to address a very specific and one-off situation. Therefore, it is not appropriate to modify Directive 2004/49/EC and Directive 2016/798 by which it is replaced with effect from 16 June 2019. Relevant provisions concerning the affected authorisations are covered by Directive 2004/49/EC. Taking this into consideration a regulation of the European Parliament and Council appears to be the only adequate form of legal act.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable due to the exceptional and one-off nature of the event necessitating this proposal.

- **Stakeholder consultations**

The specific circumstances surrounding the negotiations for the withdrawal of the United Kingdom from the Union and the continuously evolving situation posed major limitations on the possibility to consult publicly on the proposal. However, the challenges arising from the United Kingdom's withdrawal from the EU and possible solutions have been raised by various rail stakeholders and a Member State's representatives.

- **Collection and use of expertise**

This information has been subject to in-house legal and technical analysis to ensure the proposed measure achieves its intended purpose, but is at the same time limited to what is strictly necessary.

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. There are no materially different policy options available except for the one proposed.

- **Fundamental rights**

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable due to the short-term nature of the proposed measure.

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

(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,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of Regions⁴

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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, that is to say 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 operators concerned, through various measures such as operators establishing themselves in a Member State and obtaining appropriate licences and certificates there.
- (3) The application of the Union safety rules to the Channel tunnel is currently conferred upon a binational safety authority, set up under the Treaty of Canterbury. The system established by this Treaty would have to be adapted taking into account the status of the United Kingdom as third country.
- (4) The measures in this proposal are conditional on safety standards and procedures identical with the Union requirements being applied to the infrastructure which is used for the purposes of ensuring cross-border rail connectivity with the United Kingdom.
- (5) In order to allow concerned parties to enter into the necessary agreements and to take any other measures required to avoid disruptions, taking into account the status of the

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

United Kingdom as a third country, it is necessary to extend the validity of certain authorisations.

- (6) The duration of such extension of the validity of authorisations should be limited in time to what is strictly necessary in order to enable the Member States concerned to take those necessary steps, in accordance with the applicable provisions of Union law.
- (7) To avoid major disruption of the cross-border rail services with the United Kingdom, it will also be essential that the rail operators and the national authorities take the required measures speedily to ensure that market access licences, train drivers licences, as well as certificates, licences and authorisations required to operate on Union territory are issued in good time before the 29 March 2019.
- (8) 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, where it is not ensured that safety standards identical with the Union requirements are applied to any relevant infrastructure. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁵ The examination procedure should be used for the adoption of those measures, given their potential impact on railway safety. Given the inherent urgency of the matter, the Commission should adopt immediately applicable implementing acts.
- (9) Given the urgency entailed by the circumstances of the United Kingdom's departure from the Union, 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, should apply.
- (10) The provisions of this Regulation should enter into force as a matter of urgency and apply as from the day following that on which the Treaties cease to apply to and in 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 authorisations issued under Directive 2004/49/EC of the European Parliament and of the Council⁶.

⁵ 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.

⁶ 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

2. This Regulation shall apply to the 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, which are valid on the day preceding the date of application of this Regulation.

Article 2

Definitions

For the purposes of this Regulation, the relevant definitions of Directive 2004/49/EC and the implementing acts adopted by virtue of this Directive shall apply. The relevant definitions of Directive (EU) 2016/798 of the European Parliament and of the Council⁷ and any delegated and implementing acts adopted thereunder shall apply from the date that Directive becomes applicable to the authorisations referred to in Article 1(2).

Article 3

Validity of safety authorisations

The authorisations referred to in Article 1(2) shall remain valid for 3 months from the date of application of this Regulation.

Article 4

Rules and obligations regarding authorisations

1. Authorisations governed by Article 1(2) of this Regulation are subject to the rules applicable to them in accordance with Directive 2004/49/EC, and Directive 2016/798/EU from the date it becomes applicable to these authorisations, and the implementing and delegated acts adopted by virtue of these Directives.
2. The holders of the authorisations 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 shall cooperate with and deliver all relevant information and documents to that National Safety Authority.
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, the Commission may, upon notification of the National Safety Authority, by way of implementing acts adopted in accordance with Article 7(2), withdraw the benefit conferred on the holder pursuant to Article 3.
4. Holders of authorisations 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 2004/49/EC, and Directive 2016/798/EU.

levying of charges for the use of railway infrastructure and safety certification, OJ L 164, 30.4.2004, p.44.

⁷ 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.

5. Before withdrawing the benefits pursuant to Article 3, the Commission shall in due time inform the National Safety Authority referred to in paragraph 2, the authority having issued the authorisations referred to in Article 1(2), the holders of such authorisations as well as the National Safety Authority of the United Kingdom, of its intention to proceed to such withdrawal and provide them the opportunity to make their views known.

Article 5

Safety standards

1. The National Safety Authority referred to in Article 4(2) shall monitor the railway safety standards applied to cross-border infrastructure referred to in Article 1(2). The National Safety Authority shall provide the Commission and the European Union Agency for Railways with regular reports on this matter accompanied, where appropriate, with a recommendation for the Commission to act in accordance with paragraph 2
2. Where the Commission has justified doubts that the safety standards applied to the operation of 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, by means of implementing acts adopted in accordance with Article 7(2), withdraw the benefit conferred on the holder pursuant to Article 3.
3. For the purposes of paragraph 1, the National Safety Authority may request information from the relevant competent authorities, setting a reasonable time limit. Where these relevant competent authorities do not provide the information requested within the time limit set by the National Safety Authority, or provide incomplete information, the Commission may, upon notification of the National Safety Authority, by way of implementing acts adopted in accordance with Article 7(2), withdraw the benefit conferred on the holder pursuant to Articles 3.
4. Before withdrawing the benefits 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 authorisations referred to in Article 1(2), the holders of such authorisations as well as the National Safety Authority of the United Kingdom of its intention to proceed to such withdrawal and provide them 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 2016/797/EU of the Parliament and the Council⁸. That committee shall be a committee within the meaning of Regulation (EU) 182/2011.
2. Where reference is made to this paragraph, Article 8 of Regulation (EU) 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 the day following that on which the Treaties cease to apply to and in 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 three months after 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 Strasbourg,

For the European Parliament
The President

For the Council
The President

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.