

**From:** Didier Seeuws, Director GSC Task Force on the UK - Chair of the *ad hoc* Working Party on the UK

**To:** Sören Nübel – Chair Working Party on Land transport  
Matthias Hellmann – Chair Working Party on the Court of Justice

**Cc:**

Jan Hendrik Dopheide - WPUK delegate, Permanent Representation of Germany  
Eike Lankenau - Working Party on the Court of Justice, Presidency team  
Ivo Thiemrodt - Working Party on the Court of Justice, Presidency team  
Katharina Neuffer - Working Party on the Court of Justice, Presidency team  
Martin Bauer - Legal Adviser, Council Legal Service  
Andreas Norberg - Legal adviser, Council Legal Service  
Jan Lindemann - Political Administrator, GSC  
Working Party on the UK delegates.

**Subject:** Suggested guidance by the Working Party on the UK on:

***- Draft decision of the European Parliament and of the Council empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link;***

***- Draft 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***

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Dear Mr. Nübel, Dear Mr Hellmann,

In preparation of the end of the transition period put in place by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the Commission has adopted on 27 July 2020 two proposals aiming at ensuring the continued safe and efficient operation of the Channel Fixed Link once EU law will cease to apply to and in the UK.

The main objective of these proposals is to ensure that the Channel tunnel remains under the responsibility of a single safety authority which would apply the same set of rules over the whole infrastructure, including in its section under the jurisdiction of the United Kingdom. The Intergovernmental Commission established by the Treaty of Canterbury should remain as this single authority and should continue applying Union rules on railway safety and interoperability.

These proposals consist of a Draft decision of the European Parliament and the Council empowering France to negotiate this agreement with the UK and of a Draft Regulation amending the Directive governing the railway safety and interoperability rules within the Channel Fixed Link.

The two proposals were first presented by the Commission at the Working Party on the UK (WPUK) meeting of 29 July 2020. Following this presentation and first exchange of views, consultations took place between the Legal services and Task forces of the Commission and the Council with a view to addressing some of the identified legal issues relating notably to the conditions of involvement of the Court of Justice of the European Union on the matter at stake.

As a result of these consultations, the initial Commission proposals have been adjusted and a follow-up discussion was organised on the basis of these revised texts in the Working Party on the UK on Friday 28 August 2020. On this occasion, the revised texts were presented to the Member States and I am glad to confirm that this meeting confirmed the unanimous support of delegations to the amended proposals.

I am therefore pleased to share with you, in my capacity of Chair of the Working Party on the UK, the guidance that emerged from the discussions in the WPUK. The revised texts endorsed by the Working Party on the UK are set out in the annex of this note as follows:

**Annex 1:** Draft decision of the European Parliament and of the Council empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link

**Annex 2:** Draft 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

**Annex 3:** (*new split Regulation*): Draft Regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union

You will note that changes compared to the original Commission proposals are indicated in **bold underline** and ~~strike through~~. You will also note that it is suggested to split the proposal for a draft Regulation concerning the application of railway safety and interoperability rules within the Channel Fixed Link into two draft Regulations, in order to amend the Statute of the ECJ with due respect to its prerogatives and to avoid delaying the start of the negotiations. Lastly, it is worth noting that in light of the discussions already held in our group, it is suggested not to change the legal basis of the legal act set out in Annex 1 of this document and thus only cite Article 91 TFEU, as in document ST 9974/20.

In light of this guidance, the Working Party on Land Transport is invited to deal with the draft decision empowering France and the draft Regulation amending Directive 2016/798 (Annexes 1 and 2 to this note) while the Working Party on the Court of Justice is invited to deal with the draft Regulation amending the Statute (Annex 3).

I am confident that you will respectively, on the basis of this guidance, be able to take these discussions forward rapidly with a view to their swift adoption by the European Parliament and the Council. The adoption of the instruments set out in Annex 1 and 2 will indeed be essential to allow the prompt start of the negotiations between France and the UK on this important matter. The adoption of the instrument set out in Annex 3 will in turn become essential at the end of these negotiations, before France is authorised to sign and conclude the agreement conforming to the conditions set out in Annex 1.

I thank you in advance for your cooperation and remain of course at your full disposal in this process.

I will also inform the colleagues of the Working Party on the UK of this exchange.

Kind regards,

Didier Seeuws

Chair of the Working Party on the UK.

2020/0160 (COD)

~~Proposal for a~~ DRAFT

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a 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<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) 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.

(2) Until the end of the transition period put in place 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<sup>3</sup>, the Intergovernmental Commission is considered as a body entrusted by several Member States with the tasks regarding railway safety in respect of the Channel Fixed Link. For those purposes, it therefore constitutes the national safety authority within the meaning of Article 3(7) of Directive (EU) 2016/798 of the European Parliament and the Council<sup>4</sup>. In that capacity, it applies the provisions of Union law relevant to railway safety and interoperability.

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<sup>1</sup> OJ C , , p..

<sup>2</sup> OJ C , , p..

<sup>3</sup> OJ L 29, 31.1. 2020, p.7.

<sup>4</sup> 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).

(3) After the end of the transition period referred to in recital (2) the Intergovernmental Commission will constitute a body established by a Member State and a third country. Furthermore, and unless otherwise provided for in an international agreement committing the United Kingdom, Union law would no longer be applicable to the part of the Channel Fixed Link under the jurisdiction of the United Kingdom.

(4) An international agreement with a third country regarding the application of railway safety and interoperability rules in cross-border situations is liable to affect an area covered to a large extent by Union law, and in particular by Directive (EU) 2016/798, Directive (EU) 2016/797 of the European Parliament and the Council<sup>5</sup> and Regulation (EU) 2016/796 of the European Parliament and the Council<sup>6</sup>. Therefore, any such agreement falls within the Union's exclusive external competence. Member States may negotiate or enter into such agreement only if empowered to do so by the Union in line with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU). Because of the interaction with existing Union legislation, it is also necessary that such empowerment be granted by the Union legislator, in accordance with the legislative procedure referred to in Article 91 TFEU.

(5) By letter of 16 July 2020, France requested an empowerment by the Union to negotiate and conclude an international agreement supplementing the Treaty of Canterbury with the United Kingdom.

(6) To ensure the safe and efficient operation of the Channel Fixed Link, it would be appropriate to retain a single safety authority, the Intergovernmental Commission, as responsible for the whole of that infrastructure. 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 France and of a third country respectively, it is appropriate to authorise France to enter into an international agreement with the United Kingdom regarding the application of the railway safety rules of the Union to the Channel Fixed Link in order to maintain a unified safety regime in the whole Tunnel, provided that certain requirements are fulfilled.

(7) The Intergovernmental Commission could fulfil the role of national safety authority responsible for the part of the Channel Fixed Link under French jurisdiction subject to amending Article 3(7) of Directive (EU) 2016/798, and provided that certain conditions are met.

(8) The Intergovernmental Commission should apply the same rules over the entire Channel Fixed Link, irrespective of whether they apply to the parts under the jurisdiction of France or of the United Kingdom. Such rules should be the relevant provisions of Union law and in particular Directive (EU) 2016/798, Directive (EU) 2016/797, and Regulation (EU) 2016/796, as amended or replaced, as well as the acts adopted on their basis.

(9) In accordance with Article 19 of the Treaty of Canterbury, disputes between France and the United Kingdom relating to the interpretation or application of the Treaty of

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<sup>5</sup> 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).

<sup>6</sup> 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 L138, 26.5.2016, p. 1).

Canterbury are settled by an arbitral tribunal. Where such disputes raise questions relating to the interpretation of Union law, in order to ensure the correct application of Union law, the arbitral tribunal should refer the question to the Court of Justice of the European Union and be bound by its decision.

(10) It is also necessary to establish specific rules regarding the implementation of Union law on the part of the Channel Fixed Link under France's jurisdiction, in order to ensure that Union law is correctly implemented at all times and that the Commission can oversee its application under the control of the Court of Justice, including in circumstances of urgency or in case of failure by the Intergovernmental Commission to comply with a decision of the arbitral tribunal. To that end, France should retain the right to act unilaterally, where necessary, to ensure the full and correct application of Union law on the part of the Channel Fixed Link under its jurisdiction.

(11) In order to ensure effective legal protection in the fields covered by Union law, courts or tribunals to which Article 19(1) TFEU applies should be exclusively competent for applications made by concessionaires and users of the Channel Fixed Link against decisions of the Intergovernmental Commission.

(12) The elements described in recitals (8) to (11) should be reflected in the international agreements between France and the United Kingdom regarding the Channel Fixed Link. Those international agreements should be compatible with Union law in all respects,

HAVE ADOPTED THIS DECISION:

#### *Article 1*

**This Decision sets out the conditions pursuant to which** France is empowered to negotiate, sign and conclude an international agreement with the United Kingdom regarding the application of railway safety rules within the Channel Fixed Link.

**Such an agreement shall**, ~~provided that that agreement~~ enters into force after 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 and **shall comply** with the following **conditions**:

- (1) In order to maintain a unified safety regime on the whole Channel Fixed Link, the Intergovernmental Commission established by the Treaty of Canterbury shall ensure the application, as regards the Channel Fixed Link, of the provisions of Union law **as interpreted by the Court of Justice of the European Union** relevant to the tasks of National Safety Authorities within the meaning of Article 3(7) of Directive (EU) 2016/798, and in particular of that Directive, Directive (EU) 2016/797 and Regulation (EU) 2016/796, as amended or replaced, as well as of the acts adopted on their basis.
- (2) Where a dispute submitted to arbitration in accordance with Article 19 of the Treaty of Canterbury raises a question relating to the interpretation of a provision of Union law, the arbitral tribunal shall not have the power to decide on any such question. In such case, the arbitral tribunal shall request the Court of Justice of the European Union to give a ruling on the question. The ruling of the Court of Justice of the European Union shall be binding on the arbitral tribunal.
- (3) Where necessary, in particular in circumstances of urgency or in case of failure by the Intergovernmental Commission to comply with a decision of the arbitral tribunal,

France shall retain the right to act unilaterally with a view to ensuring the full, correct and expeditious application of Union law on the part of the Fixed Link under French jurisdiction.

- (4) Courts or tribunals to which Article 19(1) TFEU applies shall be exclusively competent to decide on remedies sought by concessionnaires and users of the Channel Fixed Link against decisions taken by the Intergovernmental Commission in its capacity referred to in paragraph 1.
- (5) The agreement must be compatible with Union law in all respects.

*Article 2*

France shall keep the Commission regularly informed of the negotiations with the United Kingdom supplementing the Treaty of Canterbury or concluding a new agreement, as referred to in Article 1 and, where appropriate, invite the Commission to participate as an observer.

Upon completion of the negotiations, France shall submit the resulting draft ~~text~~ **agreement referred to in the first paragraph** to the Commission. The Commission shall inform the Council and the European Parliament thereof.

Within one month from the notification of the draft agreement, the Commission shall take a decision as to whether the requirements set out in Article 1 are fulfilled or not. Where the Commission decides that they are fulfilled, France may sign and conclude the corresponding agreement. A copy of the signed agreement shall be provided 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 start of its provisional application.

*Article 3*

This Decision is addressed to the French Republic.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

2020/0161 (COD)

DRAFT

**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**

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<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Article 16 of Directive (EU) 2016/798 of the European Parliament and Council<sup>9</sup> requires Member States to establish national safety authorities to be entrusted with the tasks specified in relation to railway safety. In accordance with Article 3(7) of Directive (EU) 2016/798, a national safety authority may be not only an authority established unilaterally by the Member State concerned but, 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.

(3) Until the end of the transition period put in place 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<sup>10</sup> (“the transition period”), the Intergovernmental

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ C , , p. .

<sup>9</sup> Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety, OJ L 138, (OJ L 138, 26.5.2016, p. 102).

<sup>10</sup> OJ L 29, 31.1.2020, p. 7.



Commission is the national safety authority within the meaning of Article 3(7) of Directive (EU) 2016/798 responsible for the Channel Fixed Link.

(4) After the end of the transition period, the Intergovernmental Commission will be a body established by a Member State and a third country. Unless otherwise provided, it would no longer be a national safety authority under Union law and Union law would 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 would be beneficial to retain the Intergovernmental Commission as the single safety authority responsible for the whole of this infrastructure.

(6) To that end, Decision XXX/XX authorises France, under certain conditions, to negotiate, sign and conclude an agreement whereby the Intergovernmental Commission established through the Treaty of Canterbury is maintained as the safety authority competent for the application of Union law within the Channel Fixed Link.

(7) It is necessary to adapt Directive (EU) 2016/798 to take account of that particular situation.

(8) To this effect, specific rules should be established regarding competent 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 common competent authority or, failing this, by its own competent authority. Dispute settlement between the Member State concerned and the third country in the areas of railway safety may raise issues of interpretation of Union law. Consequently, the Court of Justice of the European Union should be made competent for rendering preliminary rulings on such issues,

(9) This Regulation should be adopted as a matter of urgency, so as to ensure that the necessary provisions are in place at the end of the transition period. It is therefore 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 to the Treaty establishing the European Atomic Energy Community.

(10) 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.

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

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

(a) In Article 3, point 7 is replaced by the following:

‘ 7. ‘national safety authority’ means

– the national body entrusted with the tasks regarding railway safety in accordance with this Directive,

- any body entrusted by several Member States with those tasks in order to ensure a unified safety regime,
- any body entrusted by a Member State and a third country with those tasks 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 a Member State has concluded such agreement in accordance with an authorisation granted by the Union to this effect.’

(b) In Article 16, the following paragraph is added:

‘4. Where a single piece of engineering structure is partly situated in a third country and partly situated 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) third indent, and with an international agreement concluded by the Union or authorised by it, 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 agreement, the national safety authority may temporarily assume the competence for the part of the infrastructure situated in that Member State’s territory.

In the context of any international agreement as referred to in the first subparagraph, the Member State concerned shall take all measures at its disposal under such agreement to ensure that the specific safety authority complies with the applicable provisions of Union law. To this effect, and where necessary for reasons of railway safety, the Member State concerned shall make use without delay of the right afforded by the agreement with the third country concerned, whereby the national safety authority is entitled to assume sole competence over the part of the rail infrastructure situated in the Member State concerned.

Where a dispute submitted to arbitration in accordance with an international agreement referred to in the first subparagraph raises a question of interpretation of a provision of Union law, the Court of Justice of the European Union shall have jurisdiction to give a ruling on the question at the request of the arbitration tribunal set up to resolve disputes under that international agreement.

The provisions of Union law governing procedures brought before the Court of Justice of the European Union in accordance with Article 267 TFEU shall apply mutatis mutandis to requests for a ruling of the Court of Justice of the European Union made pursuant to the third subparagraph.

~~In the cases brought before the Court of Justice of the European Union in accordance with the third subparagraph:~~

- ~~(a) — the third country that is a party to the international agreement referred to in the first subparagraph may participate in the proceedings before the Court of Justice of the European Union in the same way as a Member State;~~
- ~~(b) — lawyers authorised to practise before the courts or tribunals of that third country shall be entitled to represent or assist any parties to such proceedings before the Court of Justice of the European Union. In such cases, those lawyers shall be treated in every respect as lawyers authorised to practise before courts of Member States representing or assisting a party before the Court of Justice of the European Union.~~

Where the specific safety authority fails to comply with any ruling of the Court of Justice of the European Union delivered in accordance with the third subparagraph, the Member State concerned shall without delay make use of the right afforded by the international agreement with the third country referred in the first subparagraph, whereby the national safety authority is entitled to assume sole competence over the part of the rail infrastructure situated in the Member State concerned.'

*Article 2*

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*  
*The President*

*For the Council*  
*The President*

[Split 2020/0161 (COD)]

Proposal for a DRAFT

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Protocol No 3 on the Statute of the Court of Justice of the European Union  
~~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 the  
second paragraph of Article 94 281 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<sup>++</sup>, Having  
regard to the opinion of the Committee of the Regions<sup>12</sup>;~~

**Having regard to the opinion of the Court of Justice,**

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Article 16 of Directive (EU) 2016/798 of the European Parliament and Council<sup>13</sup> requires Member States to establish national safety authorities to be entrusted with the tasks specified in relation to railway safety. In accordance with Article 3(7) of Directive (EU) 2016/798, a national safety authority may be not only an authority established unilaterally by the Member State concerned but, 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~~ concerning the construction and operation of the Channel Fixed Link.

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<sup>++</sup> OJ C, , p. .

<sup>12</sup> OJ C, , p. .

<sup>13</sup> Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety, OJ L 138, (OJ L 138, 26.5.2016, p. 102).

(3) Until the end of the transition period put in place 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<sup>14</sup> (“the transition period”), the Intergovernmental Commission is the national safety authority within the meaning of Article 3(7) of Directive (EU) 2016/798 responsible for the Channel Fixed Link.

(4) After the end of the transition period, the Intergovernmental Commission will be a body established by a Member State and a third country. Unless otherwise provided, it would no longer be a national safety authority under Union law and Union law would 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 would be beneficial to retain the Intergovernmental Commission as the single safety authority responsible for the whole of this infrastructure.

(6) To that end, Decision XXX/XX authorises France, under certain conditions, to negotiate, sign and conclude an agreement whereby the Intergovernmental Commission established through the Treaty of Canterbury is maintained as the safety authority competent for the application of Union law within the Channel Fixed Link.

(7) **Regulation xxx/xx** ~~It is necessary to~~ adapts Directive (EU) 2016/798 to take account of that particular situation.

(8) To this effect, specific rules ~~should be~~ established regarding competent 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 common competent authority or, failing this, by its own competent authority. ~~Dispute~~ **Since it does not involve private applicants but involves States on both sides, a dispute settlement mechanism** between the Member State concerned and the third country ~~in the~~ **cannot be expected to involve the domestic courts of that Member State. However, a dispute dealt with under such mechanism may concern the Union measures in the** areas of railway safety ~~may and~~ **interoperability and thus** raise issues of interpretation of Union law. ~~Consequently, in the same manner as if the matter had been addressed in an agreement between the Union and a third country. In order to avoid any possible contradiction between a ruling of the organ competent to hear disputes under such mechanism and Union law,~~ the Court of Justice of the European Union ~~should be~~ **is** made competent for rendering preliminary rulings on such issues,

**(8a) It is necessary to adapt the Statute of the Court of Justice to take account of the particular situation whereby the Court of Justice is seized of a request for a preliminary ruling by the arbitration tribunal set up to resolve disputes between the parties to the international agreement. For such proceedings before the Court of Justice, the non-member State that is a party to the international agreement concerned should be able to participate in the same way as a Member State and lawyers authorised to practice before the Courts of that non-member State should be able to represent and assist**

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<sup>14</sup> OJ L 29, 31.1.2020, p. 7.

**parties in the same way as lawyers authorised to practice before the Courts of the Member States.**

~~(9) This Regulation should be adopted as a matter of urgency, so as to ensure that the necessary provisions are in place at the end of the transition period. It is therefore 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 to the Treaty establishing the European Atomic Energy Community.~~

(10) 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.

HAVE ADOPTED THIS REGULATION:

*Article 1*

~~Directive (EU) 2016/798~~**Protocol No 3** is amended as follows:

~~(a) In Article 3, point 7 is replaced by the following:~~

~~‘7. ‘national safety authority’ means~~

~~—— the national body entrusted with the tasks regarding railway safety in accordance with this Directive,~~

~~—— any body entrusted by several Member States with those tasks in order to ensure a unified safety regime,~~

~~—— any body entrusted by a Member State and a third country with those tasks 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 a Member State has concluded such agreement in accordance with an authorisation granted by the Union to this effect.’~~

~~(b) In Article 16, the following paragraph is added:~~

~~‘4. Where a single piece of engineering structure is partly situated in a third country and partly situated 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) third indent, and with an international agreement concluded by the Union or authorised by it, 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 agreement, the national safety authority may temporarily assume the competence for the part of the infrastructure situated in that Member State’s territory.~~

~~In the context of any international agreement as referred to in the first subparagraph, the Member State concerned shall take all measures at its disposal under such agreement to ensure that the specific safety authority complies with the applicable provisions of Union law. To this effect, and where necessary for reasons of railway safety, the Member State concerned shall make use without delay of the right afforded by the agreement with the third country concerned, whereby the national safety authority is entitled to assume sole competence over the part of the rail infrastructure situated in the Member State concerned.~~

~~Where a dispute submitted to arbitration in accordance with an international agreement referred to in the first subparagraph raises a question of interpretation of a provision of Union law, the Court of Justice of the European Union shall have jurisdiction to give a ruling on the question at the request of the arbitration tribunal set up to resolve disputes under that international agreement.~~

~~The provisions of Union law governing procedures brought before the Court of Justice of the European Union in accordance with Article 267 TFEU shall apply mutatis mutandis to requests for a ruling of the Court of Justice of the European Union made pursuant to the third subparagraph.~~

**(a) In Article 19, the following paragraph is inserted as a new third paragraph after the 2nd paragraph:**

**'A State, other than a Member State, which is a party to an international agreement referred to in Article 16(4) of Directive 2016/798 shall be represented in the same manner.'**

**(b) In Article 19, the following sentence is inserted at the end of the fifth paragraph:**

**' Notwithstanding the first sentence of this paragraph, a lawyer authorised to practice before a court of a non-member State party to an international agreement referred to in Article 16(4) of Directive 2016/798 may represent or assist a party before the Court in proceedings brought by an arbitral tribunal established under such an agreement.'**

**(c) In Article 23, the following is inserted as a last paragraph:**

**'Where an international agreement referred to in Article 16(4) of Directive 2016/798 provides that an arbitral tribunal established under that agreement is to refer to the Court of Justice for a preliminary ruling a question falling within the scope of the agreement, the decision of the arbitral tribunal containing that question shall also be notified to the non-member State party to that agreement. Within two months from such notification, the non-member State concerned may lodge at the Court statements of case or written observations.'**

~~In the cases brought before the Court of Justice of the European Union in accordance with the third subparagraph:~~

- ~~(a) — the third country that is a party to the international agreement referred to in the first subparagraph may participate in the proceedings before the Court of Justice of the European Union in the same way as a Member State;~~
- ~~(b) — lawyers authorised to practise before the courts or tribunals of that third country shall be entitled to represent or assist any parties to such proceedings before the Court of Justice of the European Union. In such cases, those lawyers shall be treated in every respect as lawyers authorised to practise before courts of Member States representing or assisting a party before the Court of Justice of the European Union.~~

~~Where the specific safety authority fails to comply with any ruling of the Court of Justice of the European Union delivered in accordance with the third subparagraph, the Member State concerned shall without delay make use of the right afforded by the international agreement with the third country referred in the first subparagraph, whereby the national safety authority~~

~~is entitled to assume sole competence over the part of the rail infrastructure situated in the Member State concerned.~~

*Article 2*

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*  
*The President*

*For the Council*  
*The President*