

Regulation (EU) 2020/2222 of the European Parliament and of the Council of 23 December 2020 on certain aspects of railway safety and connectivity with regard to the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link (Text with EEA relevance)

REGULATION (EU) 2020/2222 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 December 2020

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regard to the cross-border infrastructure linking the Union
and the United Kingdom through the Channel Fixed Link

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community⁽²⁾ (the ‘Withdrawal Agreement’) was concluded by the Union by Council Decision (EU) 2020/135⁽³⁾ and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of the Withdrawal Agreement (the ‘transition period’), ends on 31 December 2020.
- (2) Article 10 of the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of a channel fixed link, signed at Canterbury on 12 February 1986 (the ‘Treaty of Canterbury’) established an Intergovernmental Commission to supervise all matters concerning the construction and operation of the Channel Fixed Link.
- (3) Until the end of the transition period, the Intergovernmental Commission constitutes the national safety authority within the meaning of Directive (EU) 2016/798 of the European Parliament and of the Council⁽⁴⁾. In that capacity, it applies in the entirety of the Channel Fixed Link the provisions of Union law relevant to railway safety

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and, under Directive (EU) 2016/797 of the European Parliament and of the Council⁽⁵⁾, railway interoperability.

- (4) After the end of the transition period, unless otherwise provided, Union law will no longer be applicable to the part of the Channel Fixed Link under the jurisdiction of the United Kingdom and, as regards the part of the Channel Fixed Link under the jurisdiction of France, the Intergovernmental Commission will no longer be a national safety authority under Union law. The safety authorisation for the Channel Fixed Link infrastructure manager and safety certificates for railway undertakings operating through the Channel Fixed Link issued by the Intergovernmental Commission pursuant to Article 11 and Article 10 respectively of Directive 2004/49/EC of the European Parliament and of the Council⁽⁶⁾ will cease to be valid from 1 January 2021.
- (5) By Decision (EU) 2020/1531 of the European Parliament and of the Council⁽⁷⁾, France was empowered to negotiate, sign and conclude an international agreement with the United Kingdom regarding the application of the railway safety and interoperability rules of the Union to the Channel Fixed Link in order to maintain a unified safety regime. Regulation (EU) 2020/1530 of the European Parliament and of the Council⁽⁸⁾ amended Directive (EU) 2016/798 as regards, inter alia, the rules pertaining to national safety authorities.
- (6) On the basis of Regulation (EU) 2020/1530, and subject to an agreement envisaged by Decision (EU) 2020/1531 and concluded under certain conditions set out in that Decision, the Intergovernmental Commission was to remain the single safety authority for the entirety of the Channel Fixed Link while constituting, as regards the part of the Channel Fixed Link under the jurisdiction of France, the national safety authority within the meaning of point (7) of Article 3, of Directive (EU) 2016/798. It is, however, unlikely that the agreement envisaged by Decision (EU) 2020/1531 will have entered into force by the end of the transition period.
- (7) Without such an agreement, as from 1 January 2021, the Intergovernmental Commission will no longer qualify as a national safety authority within the meaning of point (7) of Article 3, of Directive (EU) 2016/798, as regards the part of the Channel Fixed Link under the jurisdiction of France. Safety authorisations and safety certificates issued by the Intergovernmental Commission will cease to be valid. The French national safety authority will become the competent national safety authority for the section of the Channel Fixed Link under the jurisdiction of France.
- (8) In light of the economic importance to the Union of the Channel Fixed Link, it is essential that the Channel Fixed Link continues to operate after 1 January 2021. To that end, the safety authorisation for the Channel Fixed Link infrastructure manager issued by the Intergovernmental Commission should remain valid for a maximum period of two months from the date of application of this Regulation, which is enough time to enable the French national safety authority to issue its own safety authorisation.
- (9) The licences issued under Chapter III of Directive 2012/34/EU of the European Parliament and of the Council⁽⁹⁾ to railway undertakings established in the United Kingdom will no longer be valid after the end of the transition period. On 10 November 2020, pursuant to Article 14(3) of Directive 2012/34/EU, France notified

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the Commission of its intention to enter into negotiations on a cross-border agreement with the United Kingdom. The objective of such an agreement would be to allow rail undertakings established and licensed in the United Kingdom to use the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link until the border-crossing station and terminal of Calais-Fr ethun (France), without obtaining a licence under Directive 2012/34/EU from a Union licensing authority.

- (10) In order to ensure the connectivity between the Union and the United Kingdom, it is essential that the rail undertakings established and licensed in the United Kingdom continue to operate. To that end, the period of validity of their licences issued by the United Kingdom under Directive 2012/34/EU and of their safety certificates issued by the Intergovernmental Commission should be extended for a period of nine months from the date of application of this Regulation, which is enough time to enable the Member State concerned to take the necessary steps to ensure connectivity in accordance with Directives 2012/34/EU and (EU) 2016/798 and on the basis of the agreement envisaged by Decision (EU) 2020/1531.
- (11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the withdrawal of the benefit conferred on holders of the authorisations, certificates and licences, where compliance with the Union requirements is not ensured. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁰⁾. The examination procedure should be used for the adoption of those measures, given their potential impact on railway safety. The Commission should adopt immediately applicable implementing acts where, in duly justified cases, imperative grounds of urgency so require.
- (12) In view of the urgency entailed by the end of the transition period, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.
- (13) Since the objective of this Regulation, namely to lay down provisional measures on certain aspects of railway safety and connectivity with regard to the end of the transition period, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (14) This Regulation should enter into force as a matter of urgency and should apply from the day following that of the end of the transition period,

HAVE ADOPTED THIS REGULATION:

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Article 1

Subject matter and scope

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

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

- a safety authorisations issued under Article 11 of Directive 2004/49/EC to infrastructure managers for the management and operation of cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link;
- b safety certificates issued under Article 10 of Directive 2004/49/EC to railway undertakings established in the United Kingdom and using the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link;
- c licences issued under Chapter III of Directive 2012/34/EU to railway undertakings established in the United Kingdom and using the cross-border infrastructure linking the Union and the United Kingdom through the Channel Fixed Link.

Article 2

Definitions

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

Article 3

Validity of safety authorisations, safety certificates and licences

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

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

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