Decision (EU) 2020/1531 of the European Parliament and of the Council of 21 October 2020 empowering France to negotiate, sign and conclude an international agreement supplementing the Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link

DECISION (EU) 2020/1531 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2020

empowering France to negotiate, sign and conclude an international agreement supplementing the Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link

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[(1)],

After consulting the Committee of the Regions,

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

Whereas:

(1) The Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionnaires of a Channel Fixed Link, signed at Canterbury on 12 February 1986 (‘the Treaty of Canterbury’), established an Intergovernmental Commission to supervise all matters concerning the construction and operation of the Channel Fixed Link (‘the Intergovernmental Commission’).

(2) Until 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[(3)] (‘the transition period’), the Intergovernmental Commission is a body entrusted by several Member States with the tasks regarding railway safety in respect of the Channel Fixed Link. In this regard, the Intergovernmental Commission therefore 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 the provisions of Union law relevant to railway safety and, under Directive (EU) 2016/797 of the European Parliament and of the Council[(5)], railway interoperability.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2020/1531 of the European Parliament and of the Council. (See end of Document for details)*

(3) At the end of the transition period, the Intergovernmental Commission will become a body established through an international agreement between a Member State, namely France, and a third country, namely the United Kindgom of Great Britain and Northern Ireland ('the United Kingdom'). Furthermore, and unless otherwise provided for in an international agreement binding upon the United Kingdom, Union law will 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 Regulation (EU) 2016/796 of the European Parliament and of the Council[6] and Directives (EU) 2016/797 and (EU) 2016/798. Therefore, any such agreement falls within the Union's exclusive external competence. Member States may negotiate, or conclude, such an agreement only if empowered to do so by the Union in accordance with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU). Because of the interaction with existing Union legislation, it is also necessary for such empowerment to be granted by the Union legislator in accordance with the legislative procedure referred to in Article 91 TFEU.

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

(6) To ensure the safe and efficient operation of the Channel Fixed Link, it is appropriate to retain the Intergovernmental Commission as the single safety authority 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 partly in the territory of a third country, it is appropriate to empower France to negotiate, sign and conclude 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, subject to certain conditions.

(7) The Intergovernmental Commission is capable of fulfilling the role of national safety authority responsible for the part of the Channel Fixed Link under France's jurisdiction provided that Directive (EU) 2016/798 is amended and certain conditions are fulfilled.

(8) The Intergovernmental Commission should apply the same rules over the entire Channel Fixed Link. Those rules should be the relevant provisions of Union law, and in particular Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798, as amended or replaced, as well as the acts adopted on the basis of those legal acts.

(9) In accordance with the Treaty of Canterbury, disputes between France and the United Kingdom relating to the interpretation or application of that Treaty are to be settled by an arbitral tribunal. Where such disputes raise questions of interpretation of Union law, in order to ensure the correct application of Union law, the arbitral tribunal should request the Court of Justice of the European Union ('Court of Justice') to give a preliminary ruling on such questions and should be bound by its ruling.

(10) It is necessary to establish specific rules regarding the implementation of Union law in 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 the event 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, correct and expeditious application of Union law in 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) of the Treaty on European Union (TEU) applies should be exclusively competent for applications brought by concessionnaires 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 hereby sets out the conditions pursuant to which France is empowered to negotiate, sign and conclude an international agreement ('the Supplementing Agreement') with the United Kingdom supplementing the Treaty between France and the United Kingdom of Great Britain and Northern Ireland concerning the Construction and Operation by Private Concessionnaires of a Channel Fixed Link ('the Treaty of Canterbury') as regards the application of railway safety rules within the Channel Fixed Link.

Such an international agreement shall enter 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:

(a) in order to maintain a unified safety regime on the whole Channel Fixed Link, the Intergovernmental Commission 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 ('Court of Justice'), relevant to the tasks of the national safety authority within the meaning of Article 3, point (7), of Directive (EU) 2016/798, and in particular of Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798, as amended or replaced, as well as of acts adopted on the basis of those legal acts;

(b) where a dispute submitted to arbitration in accordance with Article 19 of the Treaty of Canterbury raises a question of interpretation of Union law, the arbitral tribunal shall not have the power to decide on any such question. In such a case, the arbitral tribunal shall request the Court of Justice to give a preliminary ruling on the question. The preliminary ruling of the Court of Justice shall be binding on the arbitral tribunal;

(c) 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