

European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 5465/3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

16 September 2020

Rachel Maclean MP
Parliamentary Under Secretary of State
Department for Transport
Great Minster House
33 Horseferry Road
LONDON SW1P 4DR

9974/20 and 9976/20: The future operation of the Channel Tunnel Fixed Link

The Committee have asked me to thank you for your joint Explanatory Memorandum (EM) of 11 August 2020 on the two above listed documents.

The Committee believes that the proposed Council Decision—and linked Regulation—constitute documents of significant legal and political importance. We are grateful for the detailed information that you have provided on their content, and the clarity with which you have explained the Government’s assessment of their potential implications for UK transport law and policy.

An agreement with France on the Channel Tunnel Fixed Link—reached in accordance with the conditions stipulated in the proposed Council Decision—would be unprecedented. As you explain in your EM, dynamic alignment with EU laws, oversight of the application and interpretation of EU law in the UK by the Court of Justice of the European Union (CJEU), and the potential future role of the European Union Agency for Railways (ERA) on the Fixed Link, would not be consistent with the Government’s ‘red lines’ or reflect the status of the UK as a non-EU Member State. We note your rejection of any agreement with France covering the Channel Tunnel that would give effect to these obligations and linked responsibilities.

The Committee is, however, disappointed that your EM did not include details of the Government’s alternative proposals for the operation of the Channel Tunnel at the end of the Transition Period. The unique status of the Channel Tunnel as the UK’s only surface transport connection to mainland Europe and

as joint UK/France infrastructure makes an agreement securing its continued safe operation critically important. Indeed, without an agreement on the prevailing safety regime applicable to the Tunnel, there is the real possibility of significant disruption to its operation.

With this mind, we request further information and your views on the following points:

- If the proposed Council Decision necessary as, without it, and an agreement between the UK and France on the continued application of EU law on the UK side of the Fixed Link, France may be in breach of its EU law obligations;
- Whether it is possible for different rules on safety and interoperability to apply on the UK and French sides of the Fixed Link or, for safety, technical or other reasons, the same rules have to apply across the entirety of the Fixed Link;
 - if the application of two sets of rules is possible (i.e. EU rules and those that would satisfy the Government's 'red lines'), whether the role of the Intergovernmental Commission (IGC) would have to be clarified to take account of this;
 - if one set of identical rules has to apply on both sides of the Fixed Link, what a system that satisfies current EU laws, but does not require (dynamic) alignment on the UK-side of the Tunnel, would look like;
- Whether there is any difference in terms of the safety and interoperability requirements applicable to rail infrastructure on the Fixed Link versus High Speed 1; and
- Whether the UK will request that the (forthcoming) ability for the ERA to issue authorisations and certificates for rail services and vehicles applicable to the French side of the Fixed Link is disapplied so as to protect the role of the IGC.

The Committee notes that the proposed Council Decision would require France to keep the Commission updated on the progress of negotiations with the UK and we seek a similar commitment from you that the Government will do likewise and provide the House with regular progress reports.

Once again, the Committee appreciates your engagement on this issue but, given the clear legal and political importance of the proposals, we reserve the

right to take further action should you not provide satisfactory responses to the above listed requests for further information.

We require a response to this letter within five working days.

I am copying this letter to Lord Kinnoull and Christopher Johnson in the Lords; Huw Merriman MP, Chairman of the Transport Committee; Hilary Benn MP, Chairman of the Committee on the Future Relationship with the EU; Angus Brendan MacNeil MP, Chairman of the International Trade Committee; Les Saunders at the Cabinet Office; and to Margaret Browne, Departmental Scrutiny Co-ordinator.

CHAIR