

European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

1 October 2020

Rachel Maclean MP
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9972/20 and 9976/20: The future operation of the Channel Tunnel Fixed Link

The Committee has asked me to thank you for your letter of 23 September 2020 on the two above listed documents.

The safe and efficient operation of the Channel Tunnel Fixed Link at the end of the Transition Period is vitally important to the UK economy. Since services first ran on the Fixed Link in 1994/5, it has revolutionised how millions in the UK, France and Europe conduct business and holiday. We appreciate the detailed response you have provided to our requests for further information but we remain unclear on the Government's position on a number of important issues.

In your letter of 23 September, you appear to suggest that safety on the Fixed Link will not be compromised in the event that an agreement on its future operation is not reached between the UK and France. We find this position hard to reconcile with the fact that the EU has published proposals concerning its future operation and you have outlined the Government's alternative approach to us. To be clear, do you believe that the Fixed Link can, from a technical perspective, operate safely and effectively at the end of the Transition Period without an agreement—including any formal or informal reciprocal commitments—being reached with France? If so, we request an explanation as to why this is the case.

Following on from this question, it appears plain to the Committee that the present uncertainty regarding the future operation of the Fixed Link has—and likely will have—serious business continuity implications for the

concessionary and those operating services on the Tunnel. Do the Government agree that a formal agreement covering the future oversight, development and enforcement of rules on the Fixed Link should be reached before the end of the Transition Period? Furthermore, we are keen to know if this a Government priority.

In your letter you speak of a ‘joint regulation approach’ between the UK and France for managing the future operation of the Fixed Link. In this regard, you outline cooperation agreements and Memoranda of Understanding that the Government will seek with France and relevant authorities (namely the EPSF). The Committee requests further information on why these arrangements cannot be made under—or by renegotiating—the Treaty of Canterbury. Furthermore, you explain that such arrangements would allow the UK and France to “meet their international obligations”. We request further information on what these international obligations are.

You note the success of the binational approach under the Treaty of Canterbury and the Committee agrees that it has provided a trusted, transparent and predictable framework for the governance of the Fixed Link. The Committee is concerned that *ad hoc* or interim arrangements reached outside of the Treaty of Canterbury framework would not match the high standards of governance that the concessionary and operators have come to expect and rely on. We request your view on whether a move away from the Treaty of Canterbury—to supplementary arrangements outside of its auspices—would have liability implications for the concessionary and operators. We would welcome the details of meetings that the Government has had with stakeholders on this issue.

Finally, the Committee struggled to distinguish between the Government’s plans for how a single set of safety and interoperability rules could function across the entirety of the Fixed Link—as you describe under the ‘joint regulation approach’—and the EU’s proposals for dynamic rule alignment. In this regard, we note your statement that “[the] Secretary of State is able to publish updates to the suite of NTSNs... *as [EU] TSIs evolve in the future*” [emphasis added]. If the approach envisaged by the Government is one-way (as it reads), it would amount to little more than dynamic alignment with EU rules but in a repackaged form. Therefore, we ask that you outline the possible scenarios in which the UK would not agree to implement an EU-derived TSI, and what the potential implications of such a rejection would be for the operation of the Fixed Link. We are also interested to hear of the potential scenarios in which the UK would request that an NTSN be given effect to on the French-half of the Fixed Link.

On a linked point, the Committee understands that NTSNs will be given effect to in the UK by administrative means. Whilst an EU Member State, EU ‘parent’ TSIs were directly applicable EU tertiary law which were scrutinised by the

European Scrutiny Committee in the Commons. Any system that copies over or gives equivalent effect to the content of EU TSIs in the UK must provide the opportunity for Parliament to assess their legal and/or political importance. We seek an undertaking from you that, should the form of joint regulation you propose be taken forward with France, you will give due regard to Parliament's role in assessing their potential implications for UK law and policy.

We require a response to this letter within 10 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