



House of Commons
European Scrutiny Committee

**Brexit: The future
operation of the Channel
Tunnel Fixed Link:
Government response to
the Committee's Thirty-
Sixth report of Session
2019–21**

**First Special Report of Session
2021–22**

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European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents.

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The current staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists), Nat Ireton and Apostolos Kostoulas (Committee Operations Officers), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist), Indira Rao MBE (Counsel for European and International Law), Paula Saunderson (Committee Operations Assistant), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk), Beatrice Woods (Committee Operations Officer).

Contacts

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First Special Report

The European Scrutiny Committee published its Thirty-Sixth Report of Session 2019–21, *Brexit: The future operation of the Channel Tunnel Fixed Link* (HC 1062), on 23 February 2021. The [Government response](#) was received from Rachel Maclean MP (Parliamentary Under Secretary of State at the Department for Transport) on 26 April 2021 and is appended below.

Appendix: Government Response

1. Thank you for the European Scrutiny Committee's report (HC 1062) of 23 February 2021 *Brexit: The future operation of the Channel Tunnel Fixed Link*. I welcomed the opportunity to appear before the Committee, as well as the publication of the Committee's report. I very much share the Committee's views on the importance of the Channel Tunnel, noting the significant social and economic benefits it brings to the UK and the vital role it plays in our cross-border trade with mainland Europe and the rest of the world. That is why the Government is committed to its future success. A key part of that is negotiating bilateral agreements at pace with France which will provide for the long-term continued smooth operation of Channel Tunnel operations, in a manner fully consistent with the UK's status as an independent, sovereign nation.
2. I am writing in response to the report and to provide an update on the progress of the ongoing negotiations with the French Government in relation to the Channel Tunnel as the Committee requested.

Safety cooperation and Eurotunnel safety authorisation

3. I am pleased to inform the Committee that considerable progress has been made in a number of key areas in relation to safety. Cooperation arrangements between the safety authorities with responsibility for the Channel Tunnel - the Intergovernmental Commission (IGC), Office of Rail and Road (ORR) and Établissement Public de Sécurité Ferroviaire (EPSF), were agreed in December 2020 and signed on 7 January 2021. These cooperation arrangements are now in force and will help ensure a co-ordinated and effective approach to safety – maintaining the very high safety standards for the Channel Tunnel. These cooperation arrangements are proving effective in practice, with positive working relationships between the authorities. In addition, a series of detailed technical annexes to these cooperation arrangements covering specific areas of safety cooperation, such as supervision and safety authorisations, are now at an advanced stage of agreement between the regulators.
4. As you are aware, the EU's contingency regulation for the Channel Tunnel¹ provided for a two-month extension to the validity of Eurotunnel's safety authorisation until 1 March 2021. I am pleased to inform the Committee that Eurotunnel received a new safety authorisation for the French half of the Channel Tunnel from EPSF on 26 February 2021.

¹ 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

This is a very welcome step and supports the continued smooth operation of cross-border traffic going forward. This new authorisation will be valid until March 2022, when the two safety regulators will issue new authorisations.

Update on bilateral negotiations

Operator licensing agreement

5. Significant progress has been made on the negotiation of a bilateral agreement on the recognition of rail operator licences for the Channel Tunnel and linked cross-border area. We currently expect that, subject to final negotiation, an agreement will be concluded, ready for signature by the UK and French Governments in the coming weeks, with ratification through the respective parliaments to follow. The proposed agreement is fully consistent with the UK's red lines as explained to the Committee in previous correspondence, particularly avoiding dynamic alignment with EU law, and conferring no role for the EU courts and European Rail Agency (ERA) on UK territory.

6. This agreement will support the continued smooth operation of cross-border traffic through the Tunnel, providing certainty, clarity and confidence to operators, both current and prospective, on the operator licensing framework for the Tunnel going forward.

7. While the final text of the agreement is being finalised ready to proceed to signature, the Department has also begun the necessary preparations to facilitate its implementation so that the relevant ratification procedures can be completed before the 30 September 2021 deadline, when the current contingency legislation expires. This includes preparing a draft Statutory Instrument (SI) to make the necessary changes to existing domestic legislation to give effect to the agreement and enable the recognition of EU operator licences in the cross-border area.² These preparations mean that the Government is fully ready to move quickly to ratify the agreement to meet the deadline on 30th September so that cross-border traffic will continue to operate smoothly. These provisions will enter into force once the bilateral agreement has been signed and ratified in both the UK and France. In the unlikely event that the UK and France failed to reach agreement on this for any reason, these domestic provisions would not enter into force. There is therefore no risk that the UK will continue to recognise licences for the cross-border area indefinitely without this being fully reciprocated on the French side.

8. The agreement will be implemented in the UK by means of a SI, the proposed Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021, which is expected to be laid in Parliament in June 2021. The SI, subject to Parliamentary agreement, will make the necessary amendments to domestic rail operator licensing legislation to support the implementation of the bilateral agreement and will be made under the affirmative procedure, rightly giving both Houses the chance to scrutinise and debate the changes proposed. I would also like to note that a draft of the SI is currently expected to be published on Gov.uk in the coming weeks prior to being formally laid for debate. DfT officials will inform the Committee Clerk once the draft has been published.

2 The amendments will primarily be to the Railway (Licensing of Railway Undertakings) Regulations 2005 and the Railway (Licensing of Railway Undertakings) (Amendment Etc.) (EU Exit) Regulations 2019.

Train driving licensing and safety certificate agreements

9. I can also update the Committee on other aspects of negotiations with France concerning Channel Tunnel services. It is expected that formal negotiations on a bilateral agreement relating to the recognition of train driving licences for the Channel Tunnel and cross-border area will begin in the coming weeks. It should be noted that robust contingency arrangements are already in place in relation to train driver licensing and could continue to be relied upon in the medium term. These contingency arrangements are already being widely used by operators but depending on the scope of operations, a bilateral may remove the need for drivers to be dual licensed with consequent cost savings and reduced complexity.³

10. Negotiations on a bilateral agreement relating to the recognition of safety certificates for the Channel Tunnel and cross-border area are ongoing and are expected to conclude in the summer. The exact timetable for implementation of this agreement is currently being agreed with the French and we will provide a further update to the Committee once available. It should be noted in any case robust contingency arrangements for safety certification are in place, or otherwise at an advanced stage of implementation and could be relied upon should the bilateral agreement not be in place by 30 September. This involves the agreement of contractual safety arrangements between the relevant operators and, for example, Eurotunnel.

Responses to Committee recommendations

11. Regarding the Committee's report of 23 February, I have provided below answers to the specific recommendations.

Recommendation 2 from the Committee's Report (paragraph 52):

We recommend [...] that [the joint regulation] approach be formalised and that any new structures required to solve disputes or provide for joint working are made clear to the public and affected stakeholders, and that the Government clearly outlines how safety on the Fixed Link is now managed, detailing the roles and responsibilities of those bodies and representatives involved.

12. Negotiations on a new binational regulation to implement the joint regulation approach are now at an advanced stage and are expected to be concluded by summer. As with previous binational regulations, this will be given effect in UK law by means of an SI, to be made under powers in the Channel Tunnel Act 1987, with an equivalent process in France. This will formalise the joint regulation approach and give it a robust legal footing. The Department engages on a very regular basis with all affected operators to provide updates on the progress of the negotiations and will continue to do so in the coming months, ensuring they are aware of, and can prepare for, upcoming changes in good time.

13. The cooperation arrangements agreed between the safety regulators, outlined at the beginning of my letter, as well as the technical annexes to those arrangements, outline

³ Assuming a bilateral agreement is reached this will mean for example that drivers of Eurotunnel shuttle services (which operate exclusively in the Tunnel) as well as some freight operators will only need to hold a single train driver licence. Depending on the nationality of the driver this could be a British, French or Belgian issued licence. Among other things this will also mean that drivers only have to undergo one set of periodic medical examinations, for example, rather than having to undergo these on both sides of the Channel.

in detail the roles and responsibilities of the regulators. ORR has published the agreed arrangements on its website.⁴ It will provide further written guidance to stakeholders in due course and will publish the technical annexes to these arrangements once they have been signed. The IGC, ORR and EPSF will also hold a joint briefing session with Channel Tunnel stakeholders regarding the new working arrangements.

14. Outside of any specific arrangements provided for in a new binational regulation, disputes between the parties relating to the legal framework for the Tunnel will be dealt with using the existing dispute settlement mechanisms provided for under the Treaty of Canterbury, as was previously the case.

Recommendation 3 from the Committee's Report (paragraph 53):

We further recommend, to achieve transparency and regulatory certainty, that the Government commit to inform Parliament of changes to the rules and standards applicable on the Channel Tunnel.

15. I fully recognise the importance of effective parliamentary scrutiny in this important area. Changes to existing interoperability and safety rules applicable to the Channel Tunnel arising from the binational regulation which is currently being negotiated between the UK and France, as well as any future such binational regulations, will be implemented by means of an SI, giving Parliament the opportunity to scrutinise the proposed changes to domestic legislation. It is expected that the implementing SI for the new binational regulation will be laid in Autumn 2021. Any additional changes brought about by the separate bilateral agreements the Government is seeking to reach with France will also be subject to the usual ratification procedures, with Parliament therefore given the opportunity to scrutinise such agreements.

16. In relation to interoperability specifically, it is worth reminding the Committee that, under the Railways (Interoperability) Regulations 2011 (S.I. 2011/3066), as amended by the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/345), it will be the decision of the Secretary of State to publish the appropriate technical standards for the UK in the format of National Technical Specification Notices (NTSNs) – to meet our particular needs. Where we consider divergence from the standard in the equivalent EU Technical Specification for Interoperability (TSI), the Government would notify Parliament through a Written Ministerial Statement (WMS) before any final decisions are made. The WMS would outline the nature of the proposed divergence, the rationale for it and set out the potential costs and benefits.

Recommendation 4 from the Committee's Report (paragraph 54):

We recommend that the Government establish mechanisms for the UK to be given advance notice of new EU proposals that cover the Channel Tunnel, in particular, to guard against the possibility of France being required to give effect to rail safety standards which the UK may not wish to apply on the UK side of the Fixed Link.

4 [Agreement between the National Safety Authorities of the French Republic and of the United Kingdom and the Channel Tunnel Intergovernmental Commission concerning cooperation in the field of safety and interoperability of railway activities - 7 January 2021 \(orr.gov.uk\)](#)

17. The new binational regulation will have provisions to provide for specific cooperation between ORR and EPSF. In addition, the robust and effective cooperation arrangements between the ORR, EPSF and IGC will facilitate advance notice to inform respective parties about any future proposals to change technical standards. The Department will also continue to monitor any proposals in the EU concerning interoperability and safety through the UK's membership of the Intergovernmental Organisation for International Carriage by Rail (OTIF), which is consulted on legislation originating from the EU.

Recommendation 5 from the Committee's Report (paragraph 60):

We recommend that changes to the governance of the Fixed Link be communicated in a timely manner to those affected and that the future framework, once agreed between the UK and France, be publicised by the Government on its GOV.UK website.

18. We continue to engage on a very regular basis with stakeholders regarding the changes to the governance of the Fixed Link brought about by the new binational regulation, and officials will remain in very regular contact with those stakeholders to provide updates on the progress of negotiations and potential changes which may arise. Ensuring certainty for affected operators will continue to be a key priority for Government.

19. The overarching framework for the Tunnel will remain the Treaty of Canterbury, which will not be affected or amended by the bilateral agreements currently being negotiated.

Recommendation 6 from the Committee's Report (paragraph 61):

For the infrastructure manager and service operators to be able to best manage changes to the operation of the Fixed Link, the Government should prioritise a framework that is clear, transparent and predictable with meaningful opportunities for consultation and engagement.

20. The binational regulation mechanism is a tried and tested means of updating the safety and interoperability framework applicable to the Channel Tunnel. The ORR and EPSF have been heavily involved in the negotiations on the new binational regulation and operator licensing agreement and will have advance notice of any changes arising from them. We will continue to engage with operators to enhance their awareness of potential changes that may be made through the new binational regulation and so they can raise any concerns. Drafts of the other bilateral agreements and the SIs needed to facilitate their ratification will be made available in draft to all affected stakeholders before they are implemented to ensure that all parties are fully able to share their views and fully apprised of any upcoming changes to the rules applicable to them.

Concluding remarks

21. I hope this letter has been helpful. I look forward to providing further updates to you on the progress of the bilateral agreements as negotiations continue.