



## Department for Transport

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From the Minister of State  
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14 MAR 2014

*Dear Commissioner Kallas*

In a letter of 20 June 2013, the European Commission addressed a Reasoned Opinion to the UK under Article 258 TFEU in respect of the economic regulation of the Channel Tunnel. The UK Government responded on 3 October 2013, and I am grateful for the constructive way that the Commission has subsequently approached this case in a number of meetings with the two Governments, both separately and together.

I am writing to set out the UK Government's intentions and understandings in respect of the four elements of the case that still need to be resolved. The purpose of this, taken alongside initiatives being taken by Eurotunnel and similar proposals from the French Government, is to allow the Commission to close the current infraction case, so that both Governments and the tunnel concessionaires can focus on continuing to grow the cross-channel international rail market, particularly for freight.

### **Charges for access to the Tunnel**

The UK response to the Reasoned Opinion set out why we consider that the current charging regime does comply with the provisions of Directive 2001/14 EC, and in particular Article 8(2). The Commission has continued to consider that the level of charges for freight are not necessary for the project to continue and that the rail freight market is too low and that charges for freight in particular are so high as to discourage growth in this market. As set out in our response to the Reasoned Opinion, it seems that a number of other factors may be at least as important as the level of charges. Nonetheless, the UK Government warmly welcomes the steps Eurotunnel has already taken through the ETICA scheme and the further initiatives it has now put forward to reduce the current level of freight charges, particularly for new entrants to the

market. These are detailed in Eurotunnel's letter of 12 March to the Commission a copy of which is at Annex 1 to this letter. We anticipate that settlement of the Tunnel infraction will facilitate Eurotunnel's implementation of the latter.

### **Method for apportioning costs**

The Commission has been concerned whether the method for apportioning costs between different users of the tunnel is sufficiently clear and avoids any possibility of "double recovery" by the same costs being imputed to more than one user. As the UK set out in its response to the Reasoned Opinion, there is currently a cost allocation method, and EU legislation is being complied with in this respect.

Were double recovery ever to occur, this would be a matter of serious concern to the UK, since ultimately it would mean either passengers or freight customers were being overcharged. The UK Government would fully support the Regulator in any action it would have to take to prevent this and remedy the situation. For example, in implementing Directive 2012/34/EU (see below), the UK Government intends to put beyond doubt the fact that the economic regulator has sufficient powers of evidence gathering and enforcement to ensure that double recovery cannot happen.

Finally, the UK and French governments will continue to work together to ensure that there is a coherent charging framework for the Channel Tunnel – as required by Article 29 of Directive 2012/34/EU – which is sufficiently clear about the treatment of new operators so as to put this point beyond any reasonable doubt.

### **Regulation of the Tunnel**

The UK Government continues to consider that the current arrangements for the economic regulation of the Channel Tunnel comply with the relevant requirements of Directive 2001/14/EC, and in particular Article 30.

However, Directive 2012/34/EU requires (in Article 55) that there should be, by 16 June 2015 a single economic regulator for the totality of a member state. To put the questions about the independence and powers of the Channel Tunnel regulation beyond any doubt, I can confirm that the UK Government intends to work with the French Government to implement this change by the end of March 2015. It is expected that this will lead to the Office of Rail Regulation (ORR) taking on responsibility for economic regulation of the UK part of the Tunnel. Arrangements will be made for cooperation between ORR and its French counterpart (ARAF), to promote a coherent approach to the regulation of the Tunnel.

## **Reservation of capacity**

The Commission has been concerned that the Rail Usage Contract (RUC) might unduly restrict access to the Channel Tunnel by operators other than Eurostar International Limited (Eurostar), SNCF, BRB or those designated by them. For the reasons set out in Annex 2 to this letter, there is no indication that this is a practical issue at the present, nor is it likely to become so at any time in the foreseeable future. Furthermore, as mentioned in the same Annex, even in the case of congestion, Eurotunnel and Eurostar would ensure that the amount of capacity required under EU law is available to new operators.

To avoid any difficulty, were this situation to change, I can confirm that the UK Government intends – in transposing Directive 2012/34 EU – to put it beyond doubt that the UK regulator has sufficient powers and independence to deal with competing demands for capacity.

I trust that the above will provide the assurance the Commission has been seeking about the regulation of access, charging and capacity allocation for the Tunnel. I should be grateful for your earliest confirmation that you will be proposing the closure of the file to the college of Commissioners.

For the avoidance of doubt, these assurances are given in good faith but without any prejudice to the formal response the UK Government has previously made to the Reasoned Opinion of 21 June 2014 and the previous letter of formal notice.

We look forward to continuing to work constructively with the Commission across the whole range of rail issues.



**BARONESS KRAMER**