

**Memorandum of Understanding between the  
Channel Tunnel IGC and the European Union  
Agency for Railways concerning cooperation in  
preparation for implementation of the technical  
pillar of the 4<sup>th</sup> Railway Package**

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## Introduction

This Memorandum of Understanding is concluded between:

- the Channel Tunnel Intergovernmental Commission, in its role as National Safety Authority (NSA) according to Directive 2004/49/EC (referred to below as "IGC"),
- and the European Union Agency for Railways according to EU Regulation No. 2016/796 (referred to below as the "Agency").

IGC and the Agency together are "the parties".

This Memorandum of Understanding defines the principles of cooperation in preparation for implementation (under EU Regulation No. 2016/796) of the technical pillar of the 4th Railway Package (referred to below as the "technical pillar").

This technical pillar consists of:

- Regulation 2016/796/EU establishing a European Union Agency for Railways (replacing Regulation (EC) 881/2004)
- Directive 2016/798/EU on safety on the Community's railways (replacing Directive 2004/49/EC)
- Directive 2016/797/EU on interoperability of the rail system within the European (replacing Directive 2008/57/EC)

In general terms, this collaboration exercise in no way pre-empts further provisions to be adopted in European legislation or those that might be taken by the Member States when transposing to national law.

## Legal basis

This Memorandum of Understanding relates to co-operation between the parties in preparation for implementation of the technical pillar. It anticipates the agreement which must be reached between IGC and the Agency for effective implementation of the new regulatory framework, as specified by the draft legislation currently in discussion within the European Parliament and Council.

This Memorandum of Understanding is thus not based on any legal or statutory obligation. The parties freely consent to this Memorandum of Understanding in the overall context of performing their current duties, as defined by the Treaty of Canterbury and the IGC bi-national regulation on the safety of the Fixed link in the case of IGC and by EU Regulation 2016/796.

## **Entry into force and duration of the Memorandum of Understanding**

This Memorandum of Understanding will enter into force as soon as it is signed by the two parties in question. It shall remain effective until it is either terminated or superseded by any future agreement or legal measure.

Each party may decide to terminate this Memorandum of Understanding at any time and without prior notice. This termination will be notified to the other party to the Memorandum of Understanding in writing (letter or email) from the signatory or someone authorised to act on their behalf.

## **Scope of application**

The planned transfer of certain responsibilities from the National Safety Authorities (NSA) to the Agency will require changes in the roles and responsibilities of both. In order to assist each other in this respect and to accurately identify the processes to be implemented via the forthcoming new regulatory framework, the parties hereby undertake to cooperate – in particular by means of specific learning cases - in the following fields:

- examination of requests and issue of safety certificates and vehicle authorisations,
- any necessary exchanges of information to enable the IGC and the Agency to carry out their respective duties.

Learning cases in relation to examination of requests and the issue of safety certificates and vehicle authorisations are particularly concerned with the specific features of the Channel Tunnel, fire safety requirements and additional conditions to be observed by rolling stock in addition to the TSIs. These learning cases incorporate the knowledge and critical assessments required to carry out these authorisation tasks in respect of the Channel Tunnel. IGC's powers extend beyond those of a national safety authority (NSA) as defined in Directives 2004/49/EC and 2008/57/EC and their respective recasts 2016/798/EU and 2016/797/EU, especially with regard to public security, rescue and safety, which means that these learning cases are also concerned with processes to establish interfaces between these various functions within the IGC.

This cooperation should allow the Agency to share IGC's experience, to examine the processes by which applications for the Channel Tunnel are considered and to highlight any aspects of the new system which need to be defined either by:

- measures of general application taken by the European Commission, or
- cooperation agreements between the Agency and IGC as envisaged in the provisions of the recast Safety and Interoperability Directives.

The plan of work will be defined by mutual agreement between the parties.

## **Methods for initiating a cooperation activity**

Any cooperation activity must originate from an exchange of written correspondence (letters or email) in which the parties to this Memorandum of Understanding will establish the following on a case-by-case basis:

- the purpose of the activity, its definition and terms,
- the list of documents to be exchanged by the Agency and IGC,
- the IGC experts and Agency officers authorised to be involved in the activity, and
- any other necessary requirements such as meeting and premises planning, estimated volume of work required for the activity, etc.

### **Expert selection**

In view of the specific features of the Channel Tunnel, and in accordance with Article 10(7) of the Treaty of Canterbury, the IGC will be responsible for selecting the experts it calls upon to review the files. The Agency will likewise be responsible for the selection of its own participants in the co-operation activities.

The IGC will be responsible for the work, except in the case of Agency staff who will still report to this agency.

### **Confidentiality**

- Confidentiality of the documents submitted to the Agency

The IGC may provide the Agency with internal working documents and documents relating to natural or legal persons who have filed authorisation requests, provided that these persons have given their prior express consent for this purpose. These documents are confidential.

In the event of a request for access to one of these documents by a third party, the IGC will be regarded as a Member State in accordance with Article 5 (5) of ERA Decision No. 41 dated 17 November 2009 concerning provisions to be applied by the agency in respect of public access to documents. To this end, the IGC will automatically be consulted in the event of a request for access to a document submitted by the third party under the terms of this Memorandum of Understanding. In accordance with EC Regulation 1049/2001, the IGC may object to transmission of the requested documents.

- Confidentiality of verbal information

The parties shall also undertake to observe confidentiality of verbal information transmitted freely by the IGC or by natural or legal persons who have agreed to cooperate directly in implementing this Memorandum of Understanding.

- Confidentiality of documents and information that does not strictly speaking form part of the cooperation exercise

This confidentiality clause also applies to documents and verbal information that does not strictly speaking form part of this cooperation exercise, yet which might nevertheless come to the attention of the IGC or the Agency during this cooperation exercise or while they are present on their respective working premises.

- Identification of tasks within the Agency

In order to clearly identify tasks within the Agency, the Agency will guarantee that certification and authorisation tasks are kept separate from tasks to monitor legality and disputes relating to competition.

- Communication with the Commission and the other NSAs

With the exception of the previous paragraph, the Agency may only pass on general information received during this work to the European Commission or to other national safety authorities on condition that this information does not refer to specific individuals by name and provided that it is not possible to identify the natural or legal person(s) in question from such information. If this latter condition cannot be fulfilled, the Agency must obtain express prior approval from the individuals in question and from the IGC.

In addition, the information collated by the Agency must not under any circumstances be used against the IGC, the French or British governments or applicants in any form whatsoever. In particular, it may not be used for the purpose of audits or examinations of the Agency as requested by the Commission with regard to notified national French and UK law or for the purpose of transposing Directives into national French and UK law.

- Destruction of documents

For the duration of the agreement, the Agency undertakes not to store any information acquired in connection with this cooperation project, irrespective of the form it takes, to ensure data protection. The Agency undertakes to destroy information received in the form of printed or electronic documents as soon as it receives notification that this Memorandum of Understanding has been terminated and no later than 16 June 2020.

- Other provisions

This confidentiality obligation will remain in force after this Memorandum of Understanding expires.

### **Place of work**

Working meetings will normally be held in the offices of the French Transport Ministry at La Défense, in the ORR's offices in London or in the Agency's offices in Lille or Valenciennes. The venue will be selected on the basis of ease of access to the necessary documentation for the meeting in question. Where practicable, the host will be regularly alternated so as to ensure an equitable balance of the associated costs.

Technical site visits to operators or manufacturers may be arranged by the IGC, as necessary, subject to their express agreement.

### **Working languages**

The IGC operates in French and in English. It receives requests from companies in both languages. It will provide the Agency with these documents in both languages.

The IGC will provide French and English interpreting services for meetings.

The Agency will provide any documents that it produces in the form agreed and requested by the IGC.

### **Salaries and transport, accommodation and subsistence costs**

The parties to this Memorandum of Understanding will each remain responsible for all associated costs (salaries and employer contributions, services, transport, accommodation and subsistence costs) for their respective participants.

However, the organisation hosting the meeting may provide drinks, sandwiches or light meals for the attendees to make it easier to hold working meetings in the offices of each party.

### **Dispute settlement: applicable law and competent jurisdiction**

Both parties to this Memorandum of Understanding endeavour to co-operate with each other to ensure the efficient conduct of their activities under it.

In the event of a disagreement between IGC and Agency officials concerning any aspect of this Memorandum of Understanding, the Chairman of IGC, the head of the other national Delegation and the Agency's Executive Director (or their chosen representatives) shall consult each other to resolve the matter to the parties' mutual satisfaction.

	IGC		European Union Agency for Railways
Name	Pascale Andreani	Christopher Irwin	Josef Doppelbauer
Position	Head of French Delegation	Head of UK Delegation	Executive Director
Date	5. 10. 2016	5. 10 2015	5. 10. 2015
Signature			