

No. 25792

FRANCE
and
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

Treaty concerning the construction and operation by private concessionaires of a channel fixed link. Signed at Canterbury on 12 February 1986

Authentic texts: French and English.

Registered by France on 16 March 1988.

FRANCE
et
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD

Traité concernant la construction et l'exploitation par des sociétés privées concessionnaires d'une liaison fixe transmanche. Signé à Cantorbéry le 12 février 1986

Textes authentiques : français et anglais.

Enregistré par la France le 16 mars 1988.

TREATY¹ BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE FRENCH REPUBLIC
CONCERNING THE CONSTRUCTION AND OPERATION BY
PRIVATE CONCESSIONAIRES OF A CHANNEL FIXED LINK

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth and the President of the French Republic,

Confident that a Channel fixed link will greatly improve communications between the United Kingdom and France and give fresh impetus to relations between the two countries,

Desiring to contribute to the development of relations and of exchanges between the Member States of the European Communities and more generally between European States,

Desiring also to permit the construction and operation of a Channel fixed link by private enterprise in accordance with the criteria laid down by the Government of the United Kingdom and the French Government,

Have decided to conclude a Treaty and to this end have appointed as their Plenipotentiaries:

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth: The Right Honourable Sir Geoffrey Howe, QC, MP, Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs;

The President of the French Republic: His Excellency Monsieur Roland Dumas, Minister for External Relations;

who, having presented their full powers, found in good and due form, have agreed as follows:

Article 1. OBJECT AND DEFINITIONS

(1) The High Contracting Parties undertake to permit the construction and operation by private concessionaires (hereinafter referred to as "the Concessionaires") of a Channel fixed link in accordance with the provisions of this Treaty, of its supplementary Protocols and arrangements and of a concession between the two Governments and the Concessionaires (hereinafter referred to as "the Concession"). The Channel fixed link shall be financed without recourse to government funds or to government guarantees of a financial or commercial nature.

(2) The Channel fixed link (hereinafter referred to as "the Fixed Link"), which shall be more particularly described in the Concession, means a twin bored tunnel rail link, with associated service tunnel, under the English Channel between Cheriton in Kent and Fréthun in the Pas-de-Calais, together with the terminal areas for control of access to, and egress from, the tunnels, and shall include any freight or other facility, and any road link between the United Kingdom and France, which may hereafter be agreed between the High Contracting Parties to form part of the Fixed Link.

¹ Came into force on 29 July 1987 by the exchange of the instruments of ratification, which took place at Paris, in accordance with article 20.

Article 2. INTERNATIONAL, LEGISLATIVE AND REGULATORY MEASURES

(1) The High Contracting Parties shall take the measures which are necessary to ensure that the construction and operation of the Fixed Link shall be consistent with their international obligations. They shall co-operate in making any necessary approaches to the relevant international organisations.

(2) The High Contracting Parties shall adopt such legislative and regulatory measures, and take such steps, as are necessary for the construction and operation of the Fixed Link by the Concessionaires in accordance with the Concession.

Article 3. FRONTIER AND JURISDICTION

(1) As regards any matter relating to the Fixed Link, the frontier between the United Kingdom and France shall be the vertical projection of the line defined in the Agreement signed at London on 24 June 1982 relating to the delimitation of the Continental Shelf in the area east of 30 minutes West of the Greenwich meridian,¹ and the respective States shall exercise jurisdiction accordingly, subject to the provisions of paragraph 3 of this Article and any Protocol or particular arrangements made pursuant to Articles 4, 5, 7 and 8 below.

(2) The frontier in the Fixed Link shall be marked by a Joint Commission, composed of representatives of the two States, as soon as possible after the completion of the relevant section of the Fixed Link and in any event before the Fixed Link comes into operation.

(3) If in the construction of the Fixed Link any works carried out from one of the two States extend beyond the line of the frontier, the law that applies in that part which so extends shall, in relation to matters occurring before that part is effectively connected with works which project from the other State, be the law of the first mentioned State.

(4) Rights to any natural resources discovered in the course of construction of the Fixed Link shall be governed by the law of the State in the territory, or in the continental shelf, of which the resources lie.

Article 4. POLICE AND FRONTIER CONTROLS

(1) The frontier controls shall be organised in a way which will reconcile, as far as possible, the rapid flow of traffic with the efficiency of the controls.

(2) Provisions for the exercise of police, immigration, customs and health controls, including animal and plant health controls, and of other controls which might appear necessary, will be the subject of a supplementary Protocol or other arrangements.

(3) Such a Protocol or arrangements will make provision to enable public authorities to exercise their functions in an area in the territory of the other State where controls are juxtaposed. They will also include provisions for the free circulation throughout the Fixed Link of public officials and other persons, so far as is necessary for the exercise of their functions in relation to the construction and operation of the Fixed Link, and for the protection and assistance to be accorded to them.

(4) The construction and maintenance of the buildings and installations necessary for frontier controls will be at the charge of the Concessionaires on terms prescribed in the Concession.

¹ United Nations, *Treaty Series*, vol. 1316, p. 119.

(5) Each Government shall be responsible for the payment or recovery of the costs of its own controls.

Article 5. DEFENCE AND SECURITY

(1) Defence and security matters relating to the Fixed Link and the implementation of this Treaty shall be the subject of special arrangements between the two Governments. Such arrangements shall include provisions for the free circulation throughout the Fixed Link of public officials and other persons, so far as is necessary for the exercise of their functions in relation to the defence and security of the Fixed Link, and for the protection and assistance to be accorded to them.

(2) Such arrangements will provide for the designation by each Government of the authorities empowered to take any decision necessitated by the defence and security of the Fixed Link. The authorities so designated by the two Governments, or their agents, will so far as possible co-ordinate their activities within the framework of such arrangements.

(3) The Concessionaires shall submit to the two Governments for their approval any proposed designs, plans or arrangements affecting the defence and security of the Fixed Link and the two Governments shall agree a joint response to any such proposals.

(4) The Concessionaires shall, if required by the two Governments, take measures necessary for the defence and security of the Fixed Link. Save in exceptional circumstances of the kind envisaged in Article 6, the two Governments shall consult each other before requiring the Concessionaires to take such measures, and shall act jointly.

Article 6. EXCEPTIONAL CIRCUMSTANCES

(1) In the event of any exceptional circumstances, such as natural disasters, acts of terrorism or armed conflict, or the threat thereof, each Government, after consultation with the other if circumstances permit, may take measures derogating from its obligations under this Treaty, its supplementary Protocols and arrangements, or the Concession.

(2) Such measures may include closure of the Fixed Link, but shall be limited to the extent required by the exigencies of the situation and shall be notified immediately to the other Government and, as appropriate, to the Concessionaires.

Article 7. SOCIAL SECURITY, SAFETY AND LABOUR LAWS

The two Governments may make provision, by supplementary Protocol or other arrangements, relating to the application of laws on social security, employment and health and safety at work to the construction or operation of the Fixed Link.

Article 8. MUTUAL ASSISTANCE IN LEGAL MATTERS

The two Governments may make provision, by supplementary Protocol or other arrangements, for mutual assistance in the enforcement of civil, commercial, criminal, and administrative law and for the law applicable to the construction and operation of the Fixed Link.

Article 9. FISCAL, CUSTOMS AND MONETARY REGIME

(1) The taxation by the two States of profits and gains derived from the construction or operation of the Fixed Link shall be in accordance with the laws of the

two States, including any Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income¹ that is in force for the time being and any Protocol thereto.

(2) The two States shall observe the principle of non-discrimination in relation to taxes on charges made to users of transport which is in direct competition for cross-channel traffic.

(3) The transfers of funds and financial settlements necessitated by the construction or operation of the Fixed Link, whether between the two States or from or to third countries, shall be permitted subject to the procedures, if any, prescribed by national laws made consistently with Community law. Conversions shall be made at the market rate applicable to similar transactions. The two States shall not levy any tax on such transfers of funds or financial settlements other than generally applicable taxes on the payments which they represent.

(4) Both Governments intend, so far as may be consistent with their international obligations, to allow to travellers through the Fixed Link from the mainland of one State to that of the other duty-free facilities which are comparable to those available to persons travelling from one State to the other by sea or air.

Article 10. INTERGOVERNMENTAL COMMISSION

(1) An Intergovernmental Commission shall be established to supervise, in the name and on behalf of the two Governments, all matters concerning the construction and operation of the Fixed Link.

(2) With regard to the Concessionaires, the two Governments shall exercise through the Intergovernmental Commission their rights and obligations under the Concession, other than those relating to the amendment, extension, suspension, termination or assignment of the latter.

(3) The functions of the Intergovernmental Commission shall include:

(a) Monitoring the construction and operation of the Fixed Link;

(b) Undertaking necessary consultations with the Concessionaires;

(c) Taking decisions in the name of the two Governments for the implementation of the Concession;

(d) Approving proposals made by the Safety Authority as provided by Article 11;

(e) Drawing up, or participating in the preparation of, regulations applicable to the Fixed Link, including regulations relating to maritime matters and the environment, and monitoring their subsequent implementation;

(f) Considering any matter referred to it by the Governments or the Safety Authority or any other matter which appears to it to be necessary to consider;

(g) Giving advice and making recommendations to the two Governments or the Concessionaires.

(4) Each Government shall appoint half the members of the Intergovernmental Commission, which shall comprise at most 16 members including at least two representatives of the Safety Authority. The Chairmanship of the Commission shall be held for a period of one year by the head of each delegation alternately.

¹ United Nations, *Treaty Series*, vol. 725, p. 3.

(5) The decisions of the Intergovernmental Commission shall be taken by agreement between the heads of the British and French delegations. In the event of disagreement between them, the procedure for consultation between Governments provided for in Article 18 shall apply.

(6) The Intergovernmental Commission shall draw up its own rules of procedure and submit them for the approval of the two Governments.

(7) For the purpose of carrying out its functions the Intergovernmental Commission may invoke the assistance of the authorities of each Government or any body or expert of its choice.

(8) The Governments shall take all necessary measures to ensure that regulations applicable to the Fixed Link have the necessary force and effect within their national laws and shall grant to the Intergovernmental Commission such powers of investigation, inspection and direction as are necessary for the performance of its functions.

(9) The expenses of the Intergovernmental Commission shall be met by the Concessionaires as provided in the Concession.

Article 11. SAFETY AUTHORITY

(1) A Safety Authority shall be established to:

(a) Advise and assist the Intergovernmental Commission on all matters concerning safety in the construction and operation of the Fixed Link.

For this purpose, the Safety Authority shall:

(i) Give advice or make proposals to the Intergovernmental Commission, at the request of the Intergovernmental Commission or on its own initiative;

(ii) Participate in the drawing-up of any regulations applicable to safety of the Fixed Link and present them to the Intergovernmental Commission;

(iii) Discharge, within the scope of its own powers, any function delegated to it by the Intergovernmental Commission;

(b) Ensure that the safety measures and practices applicable to the Fixed Link comply with the national or international laws in force, enforce such laws, monitor their implementation, and report thereon to the Intergovernmental Commission; and

(c) Examine reports concerning any incident affecting safety within the Fixed Link, make such investigations as are necessary, and report thereon to the Intergovernmental Commission.

(2) The Safety Authority shall undertake necessary consultations with the Concessionaires.

(3) In an emergency, the Chairman of the Safety Authority or his agent shall take the measures necessary for the safety of persons and property within the Fixed Link. He shall report any measures taken to the two Governments and to the Intergovernmental Commission.

(4) The composition of the Safety Authority shall be determined by the two Governments by agreement. Each Government shall appoint half its members. The Chairmanship of the Safety Authority shall be held for a period of one year by the head of each delegation alternately.

(5) The Safety Authority shall draw up its own rules of procedure and shall submit them through the Intergovernmental Commission for the approval of the two Governments.

(6) For the purpose of carrying out its functions, the Safety Authority may invoke the assistance of the authorities of each Government or any body or expert of its choice.

(7) The Safety Authority may, where it considers it necessary to do so, make a report to the two Governments at the same time as it reports to the Intergovernmental Commission.

(8) The two Governments shall grant to the Safety Authority and its members and agents such powers of investigation, inspection and direction as are necessary for the performance of its functions.

(9) The expenses of the Safety Authority shall be met by the Concessionaires as provided in the Concession. The budget of the Safety Authority shall be determined by the Intergovernmental Commission after consultation with the Authority.

Article 12. FREEDOM OF MANAGEMENT OF THE CONCESSIONAIRES

(1) The two Governments shall ensure that the Concessionaires are free, within the framework of national and Community laws, to determine their commercial policy, their tariffs and the type of service to be offered, during the term of the Concession.

(2) In particular laws relating to the control of prices and tariffs shall not apply to the Fixed Link during the term of the Concession.

(3) These provisions shall not, however, exclude the application of national or Community rules concerning competition or abuse of a dominant position.

Article 13. OBLIGATIONS OF THE CONCESSIONAIRES

The Concession will include provisions which give effect to the following principles:

(1) In their dealings with the Governments, the Concessionaires shall act jointly and shall be represented by a single executive. They shall be responsible jointly and severally during the whole term of the Concession.

The Concessionaires shall appoint one or more independent project managers for the construction of the Fixed Link.

(2) The Concessionaires shall comply with the provisions of the Concession, with the laws and regulations in force in each of the two States, and with the Community rules applicable to the construction and operation of the Fixed Link; they shall comply with those provisions of this Treaty and of the supplementary Protocols and arrangements which are applicable to them. They shall not take any action which would result in either State being in breach of its international obligations.

(3) The Concessionaires shall ensure the continued flow of traffic in the Fixed Link under satisfactory safety conditions and subject to any decision which may be taken pursuant to Articles 4, 5, 6, 10 and 11 of this Treaty.

(4) In transactions concerned with the construction and operation of the Fixed Link, the British Concessionaires and the French Concessionaires shall apply the principle of equal division of costs and revenue between themselves taking into account, to the extent necessary, indirect taxation.

(5) The Concessionaires shall take such measures as may be necessary to prevent accidents. The Concessionaires shall be liable for damage caused to users and to third parties resulting from the construction, the existence or the operation of the Fixed Link in accordance with the law applicable on the part of the Fixed Link where the event giving rise to the damage takes place. The Concessionaires shall take out and maintain insurance, or other financial security, which is adequate and reasonably appropriate to the relevant risk.

(6) If the construction of the Fixed Link is not satisfactorily completed or if its operation has ceased for whatever reason, the Concessionaires shall, if required by the Governments as provided in the Concession, at their own expense ensure that any part of the Fixed Link which is abandoned or unserviceable is removed or made safe.

This provision shall not apply in cases where the Governments have taken action to terminate the Concession other than for reasons of national defence, or for a failure by the Concessionaires to satisfy or comply with the terms of the Concession, or under the powers conferred by Article 6.

The two Governments are not obliged to complete the construction or to operate the Fixed Link.

(7) The Concessionaires shall negotiate agreements with the British and French telecommunications operators relating to the use by them of the Fixed Link.

Article 14. MODIFICATION OF CONCESSION

No modification of the terms of the Concession shall be made without the prior approval of both Governments.

Article 15. COMPENSATION OF CONCESSIONAIRES

(1) When the term of the Concession ends, no compensation of whatever kind shall be due to the Concessionaires except as expressly provided in the Concession.

(2) The two States undertake not to interrupt or terminate the construction or operation of the Fixed Link by the Concessionaires throughout the term of the Concession save on the grounds of national defence, or in the case of a failure by the Concessionaires to satisfy or comply with the terms of, and as provided in, the Concession or under the powers referred to in Article 6. Any breach by a State of this obligation would give the Concessionaires a right to compensation in accordance with the provisions of the Concession and consistent with international law.

(3) If a State interrupts or terminates the construction or operation of the Fixed Link by the Concessionaires on grounds of national defence, the Concessionaires shall be eligible for compensation as provided under the law of the State concerned. In those cases where both States are liable under this provision and where the Concessionaires make a claim for compensation against both States, they may not receive from each State more than half of the amount of compensation payable in accordance with the law of that State.

(4) Each State shall bear the cost of the payment of the compensation to the Concessionaires in proportion to its responsibility, if any, in accordance with international law.

Article 16. COMPENSATION BETWEEN STATES

In the event of either State unilaterally interrupting or terminating the construction or operation of the Fixed Link by the Concessionaires during the term of the

Concession, the other State shall be entitled to compensation. Such compensation shall be limited to the actual and direct loss suffered by that other State and shall exclude any indirect loss or damage; in particular it shall exclude any loss of taxation or other benefits derived from the establishment or operation of the Fixed Link. No compensation shall be payable in respect of an interruption or termination of the construction or operation of the Fixed Link on grounds of national defence where it serves the defence interests of both States.

Article 17. RIGHTS OF GOVERNMENTS ON TERMINATION OF CONCESSION

Where the Concession terminates, whether by effluxion of time or prematurely for whatever reason, the rights enjoyed by the Concessionaires in that part of the structure, land and fixed installations of the Fixed Link within the jurisdiction of each State will revert to that State. Other property relating to the Fixed Link should become the joint property of the two States under the conditions provided for in the Concession. If the two Governments decide to continue to operate the Fixed Link together, they will do so on the basis of equality of rights and obligations, including the upkeep of the structure and installations of the Fixed Link.

Article 18. CONSULTATION BETWEEN GOVERNMENTS

The two Governments shall consult, at the request of either:

- (a) On any matter relating to the interpretation or the implementation of this Treaty or the Concession;
- (b) On the consequences of any measures announced or taken which could substantially affect the construction or the operation of the Fixed Link;
- (c) On any action proposed in relation to any rights or obligations of the States under the Treaty or the Concession,
- (d) Upon the termination of the Concession for any reason, on the future use of the Fixed Link, its continued development and its continued operation.

Article 19. ARBITRATION

(1) An arbitral tribunal shall be constituted to settle:

(a) Disputes between the two States relating to the interpretation or application of this Treaty which are not settled through consultations under Article 18 within three months;

(b) Disputes between the Governments and the Concessionaires relating to the Concession;

(c) Disputes between the Concessionaires relating to the interpretation or application of this Treaty.

(2) The arbitral tribunal shall be constituted for each case in the following manner:

(a) Within two months of the receipt of the request for arbitration each Government shall appoint one arbitrator.

(b) The two arbitrators shall, within a period of two months of the appointment of the second, appoint, by mutual agreement, a national of a third State as third arbitrator, who shall act as chairman of the tribunal.

(c) If within the time limits specified above any appointment has not been made, a party may, in the absence of any other agreement, request the President of the Court of Justice of the European Communities to make any necessary appointment.

(d) If the President of that Court is a national of either State, or if he is otherwise unable to act, the Presidents of the Chambers of the Court in order of seniority shall be requested to make the appointment.

(e) If the latter are nationals of one of the States or are likewise unable to act, the member of the Court next in seniority who is not a national of either State or otherwise unable to act shall be requested to make the appointment.

(f) In any case to which the Concessionaires are parties they shall be entitled to appoint two additional arbitrators. The two arbitrators appointed by the Governments shall appoint the chairman of the tribunal by agreement with the two arbitrators appointed by the Concessionaires. In default of agreement within the time limit specified in sub-paragraph (b), the chairman shall be appointed in accordance with the procedure prescribed in sub-paragraphs (c), (d) and (e) of this paragraph. The arbitrators appointed by the Concessionaires shall not participate in that part of any decision relating to the interpretation or application of the Treaty.

(3) The arbitral tribunal shall take decisions by a majority vote. No arbitrator may abstain. In the event of the votes being equally divided the chairman shall have a casting vote. The tribunal may, at the request of one of the parties, interpret its own decisions. Decisions of the tribunal shall be final and binding on the parties.

(4) Each party shall bear the costs of the arbitrator appointed by it, or appointed on its behalf, and an equal share of the costs of the chairman; the other costs of the arbitration process shall be borne in a manner determined by the tribunal.

(5) In order to resolve any disputes regarding the Treaty, the tribunal shall have regard to the Treaty and the relevant principles of international law.

(6) In order to resolve any disputes regarding the Concession, the relevant provisions of the Treaty and the Concession shall be applied. The rules of English law or the rules of French law may, as appropriate, be applied when recourse to these rules is necessary for the implementation of particular obligations under English law or French law. In general recourse may also be had to the relevant principles of international law, and if the parties in dispute agree, to principles of equity.

Article 20. RATIFICATION AND ENTRY INTO FORCE

This Treaty is subject to ratification. It shall enter into force on the date of the exchange of instruments of ratification, which shall take place at Paris.

EN FOI DE QUOI, les Plénipotentiaires respectifs ont signé le présent Traité et y ont apposé leurs sceaux.

FAIT à Cantorbéry, le 12 février 1986, en double exemplaire, chacun en langues française et anglaise, les deux textes faisant également foi.

Pour le Président
de la République française :

[*Signé — Signed*]¹

Pour Sa Majesté britannique :

[*Signé — Signed*]²

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Treaty and have affixed thereto their seals.

DONE in duplicate at Canterbury, on 12 February 1986, in the French and English languages, both texts being equally authoritative.

For the President
of the French Republic:

For Her Britannic Majesty:

¹ Signé par Roland Dumas — Signed by Roland Dumas.

² Signé par Geoffrey Howe — Signed by Geoffrey Howe.